

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

77-7023

United States Court of Appeals
FOR THE SECOND CIRCUIT

NIKIFOROS ZERVOS,

Plaintiff,

against

S.S. SAM HOUSTON and WATERMAN STEAMSHIP
CORPORATION,

Defendants,

WATERMAN STEAMSHIP CORPORATION,

Defendant-Appellant,

and

ADDIS ABABA BANK S.C., NATIONAL BANK OF ETHIOPIA,
SOLOMAT, P.L.C., VAN EKRIS & STOETT, INC.,
LONRAY, INC., CONTINENTAL BANK INTERNATIONAL
and MARINE MIDLAND BANK-NEW YORK,

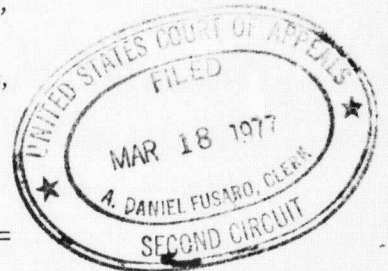
Interpleaded Defendants,

CONTINENTAL BANK INTERNATIONAL,

Interpleaded Defendant-Appellee,

etc.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



APPENDIX

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendant-Appellant
One State Street Plaza
New York, N. Y. 10004

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Defendant-Appellee*
350 Park Avenue
New York, N. Y. 10022

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1a
Docket Entries

FILE NO.	TH	NUMBER	MO.	DAY	YEAR	J	N/S	U	R	23	S	OTHER	NUMBER	DEM.	YIL	NUM
208-1	75	5293	10	24	75	3	120	1				260	0863		75	529

PLAINTIFFS

NIKIFOROS ZERVOS

76 CIV 985 consolidated with this
Proceeding for all purposes.

breach of contract; non-delivery of

Poles, Tyblin, Patestides and Strataki
46 Trinity Place, NYC 10006
943-0110

subst.:
Shedd, Moraites and Rathe
45 Rockefeller Plaza
NYC 10020

DEFENDANTS WERKER, J.

S.S. SAM HOUSTON
WATERMAN STEAMSHIP CORP.
-and-

ADDIS ABABA BANK S.C., NATIONAL BANK
OF ETHIOPIA, SOLOMAT, P.L.C., VAN EKRIS
& STOETT, INC., LONRAY, INC.,
CONTINENTAL BANK INTERNATIONAL and
MARINE MIDLAND BANK-NEW YORK,

Interpleaded Defendants.

ADDIS ABABA BANK S.C., NATIONAL BANK
OF ETHIOPIA and SOLOMAT, P.L.C.,

Counterclaim and
Cross-Claim Plaintiffs,

-against-

NIKIFOROS ZERVOS, WATERMAN STEAMSHIP
CORPORATION, SOLOMON MAHTEME SELASSIE,
FIRST NATIONAL CITY BANK, MARINE
MIDLAND BANK-NEW YORK, LONRAY, INC.,
and VAN EKRIS & STOETT, INC.,

Counterclaim and
Cross-Claim Defendants.

~~Interpleaded def.:~~
Graubard Moskowitz McGoldrick Dan
& Horowitz, 345 Park Ave., NYC 10
593-3000

David M. Berenson (Marine Midland)
120 B'way, NYC 10005 - WO 2-2356

Cole & Deitz (Van Ekris & Stoett)
40 Wall St., NYC 10005 - 269-2500

for Lonray, Inc.:

Barrett Smith Spapiro & Simon
26 Broadway, NYC 10004 -- 422-8111

for Continental Bank International
Kelly, Drye & Warren

350 Park Ave., NYC 10022 - 752-5111

☐ CHECK
HERE
IF CASE WAS
FILED IN
FORMA
CALIFORNIA

DATE
OCT 24 1975

FILING FEES PAID
RECEIPT NUMBER

C.D. NUMBER

STATISTICAL CARD

CARD

DATE MA

JS-5

IS-6

Entries

75 Civ. 5293 NIKIFOROS ZERVOS VS WATERMAN SS CORP. WERKER, J.

- page 1 -

DATE	NR.	PROCEEDINGS
10-24-75	1	Filed complaint and issued summons.
10-24-75	2	Filed order appointing Mark Ross to serve the summons and complaint upon deft. Clerk
10-29-75	3	Filed affdvt. of service of process server - served: Waterman SS Co. by Carol Musch on 10-28-75
11-07-75	4	Filed ANSWER of deft. Waterman SS Corp. and COUNTERCLAIM for Interpleader. - summons issued. HCP&H.
11-28-75	5	Filed additional summons and Marshals returns - served: Continental Bank International by P. Miller on 11-12-75 Lonray, Inc. by John Mengon on 11-14-75 Van Ekris & Stoett, Inc. by R. Weitzer on 11-14-75
12-09-75	6	Filed defendants affdvt. and ORDER TO SHOW CAUSE why an order should not be made adding Marine Mid and Bank New York as an additional interpleaded defendant, etc. - Service by 12-9-75 at 5 PM. -- ret. 12-15-75 -- Werker, J.
12-09-75	7	Filed defts. memorandum in support of above OSC.
12-09-75	8	Filed stip. and order that the time for interpleader-deft. Continental Bank International to answer with respect to counterclaim for interpleader is ext. to 1-02-76 -- Werker, J.
12-12-75	9	Filed pltfs response to defendants motion (affdvt. of John C. Mamoulak
12-12-75	10	Filed pltfs. affdvt. and notice of cross motion directing defts. to deliver goods, etc. ret. on: Dec. 15, 1975 at 10am.
12-18-75	11	Filed responding memorandum of the Ethiopian Parties.
12-18-75	12	Filed by Ethiopian Parties affidavits relating to certain settlement negotiations.
12-18-75	13	Filed by Marine Midland Bank-New York affdvt. in opposition to motion of deft. Waterman SS Corp. (affdvt. of David M. Berenson)
12-18-75	14	Filed ORDER making Waterman SS Corp. an interpleaded defendant; ordered that Waterman SS Corp. is directed to sell all the Coffe in a commercially reasonable manner; that sale of the Coffee shall be without prejudice; that, upon inquiry by any party hereto or any bidder having submitted a bid for the Coffee, Waterman SS Corp. shall immediately inform the person of all bids already submitted; that the Clerk of the Court is directed immediately upon payments of funds into the Registry of the Court, to invest all such funds in certificates as indicated, et Ordered that within 20 days of the entry of this order, all of the parties plead and interplead amongst themselves; Waterman SS Corp, to file report with the Court. Ordered that except as herein granted, the motion of Waterman SS Corp. and the cross-motion of Van Ekris & Stoett, Inc. are denied. -- Werker, J. m/n
12-17-75	15	Filed by Ethiopian Parties affdvt. of service of response to OSC.
01-12-76	16	Filed stip. and order that the period of 20 days within which all of the parties are required to plead and interplead amongst themselves in this action pursuant to order of 12-17-75, is ext. to 1-16-76 -- Werker, J.
01-20-76	17	Filed Waterman Steamship Corporation Report on Sale of Coffee. 11:11
01-22-76	18	Filed stip. and order that the period within which all the parties are required to plead and interplead amongst themselves is ext. to 1-27-76 -- Werker, J.

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Entries

JS CIV 5293 HFW
Zervos v. Waterman SS Corp.

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Or Judgment
1-27-76	19) Filed affdvt. and order appointing person to serve process on First National City Bank -- Clerk.	
01-27-76	20) Filed ANSWER and COUNTERCLAIM for interpleader of Marine Midland Bank	DMB
01-27-76	21) Filed ANSWER and COUNTERCLAIM for interpleader of Van Ekris & Stoett, Inc.	C&D
01-27-76	22) Filed ANSWER to pltf's complaint, REPLY to counterclaims and COUNTERCLAIMS and CROSS-CLAIMS of Addis Ababa Bank S.C., Solomat, P.L.C. and National Bank of Ethiopia.	GMMB
01-27-76	23) Filed by Ethiopian parties - request to Nikiforos Zervos for production of documents.	
01-27-76	24) Filed by Ethiopian parties - request to Waterman SS Co. for production of documents.	
01-27-76	25) Filed by Ethiopian parties - request to Van Ekris & Stoett, Inc. for production of documents.	
01-27-76	26) Filed by Ethiopian parties - request to Lonray, Inc. for production of documents.	
01-27-76	27) Filed by Ethiopian parties - request to First National City Bank for production of documents.	
01-27-76	28) Filed by Ethiopian parties - request to Marine Midland Bank (N.Y.) for production of documents.	
01-27-76	29) Filed by Addis Bank, Solomat and National - interrog. to pltf. (first set)	
01-27-76	30) Filed by Addis Bank, Solomat and National - notice to take deposition of deft. Waterman SS Corp.	
01-27-76	31) Filed by Addis Bank, Solomat and National - notice to take depositions of plaintiff.	
01-27-76	32) Filed by Ethiopian defendants request for supplemental summons. - summons issued, to crossclaim deft. First National City Bank.	
01-28-76	33) Filed supplemental summons and affdvt. of personal service - served: on 1-27-76 First National City Bank 399 Park Ave., NYC by Mr. Mayer	
01-28-76	34) Filed ANSWER of Interpleaded deft. Continental Bank Internat'l to complaint and to Counterclaim for interpleader.	KD&W BSS&S
01-27-76	35) Filed ANSWER of interpleaded deft. Lonray, Inc.	
01-27-76	36) Filed CLAIM of Waterman SS Corp. against proceedings and CROSS-CLAIM.	HGP&S
01-20-76	---- endorsed on document #14: Memo of deposit in the Registry of the court - received from Waterman SS Corp. check #21437 dtd. 1-19-76 in the amount of \$124,020.21	
01-29-76	---- endorsed on document #14: Memo from the Registry of the Court that there was deposited with Manufacturers check #6171 in the amount of \$124,020.21 for a 6 month time deposit.	
02-10-76	37) Filed plaintiffs REPLY to counterclaims, claims and cross-claims. PTF	
02-13-76	38) Filed stip. and order that the time for the cross-claim deft. First National City Bank to answer the complaint of the cross-claim pltf. is ext. to 3-2-76 and to produce documents is ext. to 3-2-76 -- Werker, J.	
02-19-76	39) Filed stip. and order that the time within which all parties are to answer, plead or otherwise respond to all pleadings, interrog. and request for production of documents is ext. to 3-10-76. -- Werker, J.	

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Entries

75 CIV 5293 M.T.
Zervos v. SS Sam Houston

(17)

DATE	PROCEEDINGS	Date Of Judgment
02-18-76	40) Filed by Addis Bank, Solomat and National -- notice to take depositions of Van Ekris & Stoett, Inc. on 3-24-76.	
02-18-76	41) Filed by Addis Bank, Solomat and National -- notice to take depositions of Marine Midland Bank, NY on 3-26-76.	
03-03-76	42) ANSWER of cross-claim deft. First National City Bank.	S&S
03-03-76	43) Filed "Citibank's" response to request for production of documents.	
03-10-76	44) Filed Waterman SS Co.'s response to request for production of documents.	
03-03-76	45) Filed Interpleaded deft. Lonray, Inc.'s response to request for production of documents.	
03-10-76	46) Filed ANSWER of deft. Marine Midland Bank to cross-claim of cross-claim plaintiffs	DMB
03-10-76	47) Filed deft. Marine Midland Bank's response to request for production of documents.	
03-10-76	48) Filed ANSWER of Interpleaded deft. Lonray, Inc. to pltf's cross-claim; answer to defendants' cross-claims; and cross-claims of Lonray, Inc. -- also jury demand.	BSS&S
03-10-76	49) Filed ANSWER of deft. Waterman SS Corp. to cross-claims of Addis Ababa Bank, S.C., Solomat, P.L.C. and National Bank of Ethiopia.	HGP&H
03-11-76	50) Filed ANSWER of interpleaded deft. Continental Bank International (CBI) to cross-claim of deft. Waterman SS Co.	KD&W
03-11-76	51) Filed ANSWER of interpleaded deft. Continental Bank International (CBI) to "counterclaim for interpleader and other relief" of interpleaded deft. Marine Midland Bank N.Y.	KD&W
03-11-76	52) Filed ANSWER of interpleaded deft. Continental Bank International (CBI) to "counterclaim for interpleader and other relief" of interpleaded deft. Van Ekris & Stoett, Inc.	KD&W
03-12-76	53) Filed by Van Ekris & Stoett, Inc., REPLY AND AMENDED CLAIMS.	C&D
03-12-76	54) Filed by Van Ekris & Stoett, Inc., response to request for production of documents.	
03-15-76	55) Filed ANSWER of Addis Bank, National and Solomat to claim and cross-claim of Waterman SS Corp.	GMND&
03-15-76	56) Filed REPLIES of Addis Bank, National and Solomat to counter-claim of Marine Midland Bank	GMND&
03-15-76	57) Filed ANSWER of Waterman SS Corp. to amended cross-claim filed by Van Ekris & Stoett, Inc.	HGP&H
03-15-76	58) Filed REPLIES of Addis Bank, National and Solomat to counter-claim of Van Ekris & Stoett, Inc.	GMND&
03-19-76	59) Filed REPLY of Addis Bank, National and Solomat to cross-claims of Lonray, Inc.	GMND&
04-07-76	60) Filed pltf's answer to interrog. of Ethiopian parties.	
04-05-76	61) Filed ANSWER of Waterman SS Corp. to cross-claim of Lonray, Inc. HG	
5-3-76	62) Filed deft. Waterman SS Corp. statment to rule 9-g.	
5-3-76	63) Filed deft. Waterman SS Corp. affdt. and notice of motion (amended) to grant summary judgment to said deft. from interpleaded deft. Continental Bank Intl. etc. ret. on: May 24, 1976 at 10am.	
05-07-76	64) Filed deft. Waterman SS Corp.'s affdt. and ORDER TO SHOW CAUSE why an order should not be made granting summary judgment to deft. Waterman SS Corp. against interpleaded deft. Continental Bank International, for certain payments due Waterman. -- ret. 5-24-76 -- Werker. J.	

Entries

75 CIV 5293 HW

Zervos v. SS Sam Houston, et.al.

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D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judgn
05-07-76	65) Filed affdvt. and order authorizing service of summons and counterclaims and cross-claims of Ethiopian Parties under Rule 4(a), etc. -- Werker, J.	
05-10-76	66) Filed Waterman SS Corp.'s amended response to request for production of documents.	
05-14-76	67) Filed Ethiopian Parties affdvt. of service of additional summons served: M. Jean Croux, Paris by reg. mail 5-12-76 Solomon Makeme Selassie, Addis Ababa, Ethiopia reg. mail 5-12-76	
05-17-76	68) Filed stip. and order substituting Shedd, Moraites & Rathe as attorneys of record for N. Zervos. -- Werker, J.	
05-17-76	69) Filed order that the motion for summary judgment of deft. Waterman will be heard on 5-24-76. Response papers due on 6-4-76. -- Werker, J.	
05-21-76	70) Filed deft. Waterman SS Corp.'s request for production of documents.	
5-25-76	71) Filed by Ethiopian parties notice of continuation of depositions of Waterman SS Co. and Fred Sevekow.	
06-02-76	72) Filed notice of entry of 5-17-76.	
06-07-76	73) Filed Ethiopian Parties' memorandum in opposition to motion of deft. Waterman SS Corp. for summary judgment.	
06-07-76	74) Filed statement of the Ethiopian Parties under Rule 9(g)	
06-07-76	76) Filed by Ethiopian Parties affdvt. of Robert D. Scott in opposition to deft. Waterman SS Corp.'s motion for summary judgment.	
06-07-76	77) Filed on behalf of "CBI" affdvt. of Patricia A. Martone in opposition to motion for summary judgment.	
06-07-76	78) Filed on behalf of "CBI" statement pursuant to Rule 9(g)	
06-07-76	79) Filed on behalf of "CBI" memorandum of law in opposition to motion for summary judgment by Waterman SS Corp.	
06-21-76	80) Filed Ethiopian Parties notice to take depositions of Alfred and Evelyn Menache on 7-2-76.-- iss 2 subp.	
06-21-76	81) Filed Ethiopian Parties notice to take depositions of Gramercy Park Hotel, Inc. on 7-2-76 -- subp. issued.	
06-21-76	82) Filed Ethiopian Parties notice to take depositions of Lexington Hotel on 7-2-76. -- issued subp.	
06-25-76	83) Filed defts. CBI response to request for production of documents of Waterman Steamship Corp.	
06-29-76	84) Filed Ethiopian Parties affdvt of Jack Weinberg in opposition to motion to Quash Subpoenas.	
06-29-76	85) Filed Ethiopian Parties memorandum in opposition to motion to Quash Subpoenas.	
06-28-76	86) Filed by Ethiopian Parties - proof of service of additional summons, answer and cross-claims.	
07-13-76	87) Filed by Ethiopian parties affdvt. and notice of motion to consolidate 76 CIV 985 LPG with 75 CIV 5293 for all purposes - ret. 8-2-76	
07-13-76	88) Filed Ethiopian parties memorandum in support of #87.	
07-21-76	89) Filed Pltff's Order to Show Cause that Addis Ababa Bank S.C. and National Bank of Ethiopia, Solomat, P.L.C. show cause on 6/30/76 at 10AM R. 618 why a protective order should not be granted etc. -- WERKER, J.	
7-27-76	90) Filed pltffs. affdvt. of John Mamoulakis.	

Entries

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DATE	PROCEEDINGS	Date Ord Judgment
07-29-76	91) Filed Van Ekris affdvt. in opposition to the motion of Ethiopian Interpl. defts for consolidation of the Waterman action with action No 2 (The Madlloyd Action)	
7-30-76	92) Filed affdt. of David Berenson (for Marine Midland Bank, NY) in opposition to motion to consolidate.	
07-23-76	* 81(a) Filed affdvt. of John J. Madden, Jr. (- over - in response to A. 87.)	
8-3-76	93) Filed motion for summary judgment to Ethiopian Interpl. for 76 CIV 985 LPG	
8-3-76	94) Filed motion for summary judgment to Ethiopian Interpl. for 76 CIV 985 LPG	
10-06-76	95) Filed Ethiopian Parties interrog. to Van Ekris & Stoett, Inc.	
10-06-76	96) Filed Ethiopian Parties request to pltf. for production of documents.	
10-06-76	97) Filed Ethiopian Parties notice to take deposition of Lonray, Inc.	
10-15-76	98) Filed Ethiopian Parties notice to take deposition of Marine Midland Bank.	
10-21-76	Filed memo and on order to show cause fld on 7-21-76. Motion denied so ordered Werker, J. m/n	
12-01-76	99) Filed response of Van Ekris & Stoett, Inc. to the interrog. (1st set of the Ethiopian parties)	
12-02-76	100) Filed pltf's response to request for production of documents.	
12-07-76	101) Filed by defts Addis Bank et.al. -- notice to take deposition of Marine Midland Bank.	
12-08-76	102) Filed OPINION #45427... Waterman's motion for summary judgment is denied. -- Werker, J. m/n	
12-09-76	103) Filed MEMORANDUM DECISION ... Ethiopian parties motion to consolidate 76 CIV 985 LPG with this proceeding for all purposes is granted. But the determination of the main claim will be dispositive of most of the collateral issues. We consolidate the cases for all purposes at this time, a trial with respect to the main claim will precede trial of the remainder of the issues in order to make conduct the trial of the other issues as orderly as possible, <u>SUBMIT ORDER</u> -- Werker, J. m/n	
12-28-76	104) Filed pltf's notice to take deposition of Ethiopian parties and Continental Bank International.	
12-28-76	105) Filed pltf's request for production of documents.	
12-17-76	106) Filed order consolidating 76 CIV 985 with this proceeding for all purposes. -- Werker, J.	
01-06-77	107) Filed deft. Waterman SS Corp.'s notice of appeal to the USCA for the 2nd Circuit from opinion and order denying motion for summary judgment.	
01-06-77	108) Filed Undertaking for costs of appeal by Continental Bank International, Interpleader deft. - \$250.00 - Firemans Fund (National Surety) Bond #2485359.	
01-11-77	109) Filed by Van Ekris & Stoett, Inc. interrog. to deft. Waterman SS Co.	
01-11-77	110) Filed by Van Ekris & Stoett, Inc. interrog. to Ethiopian Parties.	
01-14-77	111) Filed amendment to Memorandum Decision #45427 amending line 3 on page 1. -- Werker, J. m/n	

Entries

Werker, J.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. 75-5293
ZERVOS		SS SAH HOUSTON, et.al.	PAGE 7 OF 10 PAGES
DATE	NR.	PROCEEDINGS	
01-19-77	112)	Filed order authorizing service of summons and counterclaims and cross claims of E-thiopian Parties under Rule 4(e) - Werker, J.	
01-31-77	113)	Filed deft. Waterman SS Co.'s interrog. to Addis Ababa Bank S.C.	
01-31-77	114)	Filed deft. Waterman SS Co.'s interrog. to Solomat, P.L.C.	
02-02-77	115)	Filed deft. Contienental Bank International's affdvt. in response to application of "Waterman" for final judgment against CBI.	
02-02-77	116)	Filed memorandum of law by CBI in opposition to application of "Waterman" for final judgment.	
02-02-77	117)	Filed stip. and order ext. time of Ethiopian parties to produce documents and to appear at depositions to 04-11-77 and 04-12-77	
02-02-77	118	Filed request for production of documents by Addis Ababa Bank S.C.	
02-02-77	119	Filed request for production of documents by Solomat P.L.C.	
02-03-77	120	Filed memorandum of law on behalf of Waterman SS Corp. for certificate under Rule 54(b)	
02-03-77	121	Filed affdvt. and application by Waterman SS Corp. for certificate under Rule 54(b) to be submitted on PTC on 02-04-77	
02-04-77	-	PRE-TRIAL CONFERENCE HELD BY HPW	

Entries

76-0985 Judge Gagliardi Koninklijke Nedlloyd B.V. -vs- Nikoforos Zervos, et al

DATE	NR.	PROCEEDINGS
03-02-76	1	Filed entire file transferred from the Northern District of California. Mailed copies of Rule 3 & 4.
		Consent - Proceedings S.D.N.Y.-
03-22-76	2	Filed Pltff's/Order for directing purchase of certificate of deposit. Ordered that said sum of \$662,045.44 be deposited with Clk of Court in Registry of the Court. Clk directed to purchase with said sum-6 months certificate of deposit with The First National City Bank or Manufacturers Hanover Bank subject to further order&judgment of this Court. Gagliardi, J
03-05-76	3	Filed Notice of Appearance of SDNY attys for pltff in transfer action.
03-24-76		Recd Ck# RC-1126, dtd 3/18/76 amt of \$662,045.44, payable to Clerk, USDC, SDNY from Nedlloyd Inc., pltff & deposited same in Registry of Court. GMH
03-29-76		Deposited check#6,259 -662,045.44 with First Nat'l City Bank for a 6 mo. C.D.
03-31-76	4	Filed Stip&Order of dismissal as against Van Ekris&Stoett voluntarily. Gagliardi, J
03-31-76	5	Filed Consent Order of substitution of attys for pltff. Gagliardi, J.
04-13-76	6	Filed Deft. Nikiforos Zervos ANSWER, CLAIM AND COUNTERCLAIM to complaint. PTP&S
04-20-76	7	Filed Deft. Amendment of answer, claim&counterclaim. PTP&S
05-06-76	8	Filed Stip&Order of dismissal as to deft. Lep Transport Co. Gagliardi, J.
05-14-76	9	Filed Stip&Order of substitution of attys for deft. Nikiforos Zervos. So. Ordered. Goett
05-24-76	10	Filed ANSWER to pltff's complaint&counterclaims&cross-claims of Defts Addis Ababa Bank, S.C. Solomat, P.L.C. & National Bank of Ethiopia.
06-17-76	11	Filed Stip&Order extending time for pltff to answer counterclaims of defts. Addis Bank; National Bank of Ethiopia and Solomat P.L.C. to 6/30/76. Gagliardi, J.
06-22-76	12	Filed Pltff. Answer to Claims and Counterclaims.
06-22-76	13	Filed Pltff. Answer to Claims and Counterclaims.
06-30-76	14	Filed Deft. Ethiopian Parties Request for Production of documents.
07-27-76	15	Filed Deft/Zervos answer to cross-claims of Ethiopian parties. 3412
08-03-76	16	Filed Pltff's Answer to request for production of documents.
10-06-76	17	Filed Defts. Addis Bank, National Bank of Ethiopia and Solomat P.L.C. Notice to take take deposition of pltff.
12-07-76	18	Filed Defts Addis Bank, National Bank of Ethiopia&Solomat P.L.C. notice to take deposition of pltff.
12-09-76	---	Filed in 75 CIV 5293 } that 76 CIV 985 is consolidated with 75 Civ 5293 memo endorsed } for all purposes - HFW

COMPLAINT IN 75 Civ. 5293(HFW)

Plaintiff, NIKIFOROZ ZERVOS, through his attorneys, POLES, TUBLIN, PATESTIDES & STRATAKIS, for his complaint against the S.S. SAM HOUSTON and WATERMAN STEAMSHIP CORPORATION, alleges as follows:

FIRST: This is a case of admiralty and maritime jurisdiction as hereinafter more fully appears, within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

SECOND: At all times hereinafter mentioned, plaintiff was and now is a national of the Republic of Greece, permanently residing in the City of Geneva, Switzerland, with an office and place of business at 2 Rue Verdene, Geneva, Switzerland.

THIRD: Defendant, WATERMAN STEAMSHIP CORPORATION, (hereinafter "WATERMAN") is now and, at all times hereinafter mentioned was a domestic corporation with an office and place of business at 120 Wall Street, Manhattan, New York, New York, and is now and was then the owner of the United States flag ocean-going cargo vessel SAM HOUSTON.

FOURTH: At all times hereinafter mentioned, the plaintiff was the owner of a cargo of coffee shipped aboard the vessel SAM HOUSTON at Djibouti, French Somalia, on or about August 25, 1975 in two consignments, one of which was destined for New York, and the other for New Orleans, and each of which consisted of 1,251 bags of

Complaint

coffee, weighing 75,873 kilograms.

FIFTH: Defendant WATERMAN issued two Bills of Lading for the above two consignments:

- a) For the New York consignment, WATERMAN issued Bill of Lading No. 1 New York dated Djibouti August 20, 1975, a copy of which is attached hereto as Exhibit "A".
- b) For the New Orleans consignment, WATERMAN issued Bill of Lading No. 2 New Orleans, dated Djibouti, August 20, 1975, a copy of which is attached hereto as Exhibit "B".

SIXTH: On October 21, 1975, the plaintiff, who is the rightful owner thereof, presented to the defendant WATERMAN at its offices in New York the full sets of originals of the aforesaid two Bills of Lading properly endorsed by the person or firm to whose order they were made. Plaintiff then and there also made payment in full of the freight money owing, and demanded that the cargo be delivered to him. WATERMAN, through its employees, collected the freight money and two copies of each set of Bills of Lading, and acknowledged receipt of the freight money and the Bills of Lading on the third original copy of each set, copies of which are annexed hereto as Exhibit "A" and "B".

Complaint

SEVENTH: Thereafter, on October 22, 1975, defendant WATERMAN wrongfully failed and refused to deliver the aforesaid consignments of coffee, and converted same to its own benefit and use.

EIGHTH: As a result of the defendant's refusal to deliver the aforesaid cargo and its conversion thereof, the plaintiff suffered damages in the amount of \$260,000.00, which, on information and belief was the value of the cargo on October 22, 1975.

WHEREFORE, plaintiff prays:

1. That process be issued according to the practice of this honorable Court in case of admiralty and maritime jurisdiction against the vessel SAM HOUSTON, her engines, tackle and other appurtenances.
2. That the plaintiff's claim in the amount of \$260,000.00, plus interest and costs, be adjudged a preferred maritime lien on the said vessel, and that said vessel be condemned and sold to pay the aforesaid lien.
3. That a citation in due form of law in accordance with the practice of this honorable Court may issue against defendant WATERMAN STEAMSHIP CORPORATION and that it be compelled to appear and answer under oath all and singular matters aforesaid.
4. That a judgment in favor of plaintiff against defendant WATERMAN STEAMSHIP CORPORATION in the amount of \$260,000.00, together with interest from October 22, 1975,

Complaint

and costs, and that plaintiff have such other and further relief as may be just and proper.

Dated: New York, New York
October 24, 1975.

POLES, TUBLIN, PATESTIDES &
STRATAKIS
Attorneys for Plaintiff

ANSWER AND COUNTERCLAIM FOR INTERPLEADER OF
DEFENDANT, WATERMAN STEAMSHIP CORPORATION IN
75 Civ. 5293 (HFW)

Defendant, Waterman Steamship Corporation, by its attorneys, Haight, Gardner, Poor & Havens, for its answer to the complaint herein and for a counterclaim for interpleader alleges as follows:

1. Admits the allegations contained in paragraphs FIRST, THIRD and FIFTH of the complaint.

2. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs SECOND AND FOURTH of the complaint.

3. Admits that on or about October 21, 1975, the plaintiff presented to defendant, Waterman Steamship Corporation, at its offices in New York two copies of bills of lading which were alleged to be the originals of bills of lading issued by defendant, admits that plaintiff then and there also made payment of freight and demanded that the cargo be delivered to him, but except as so specifically admitted, denies the allegations contained in paragraph SIXTH of the complaint.

4. Denies the allegations contained in paragraphs SEVENTH and EIGHTH of the complaint.

AS AND FOR A FIRST, SEPARATE AND
COMPLETE DEFENSE THERETO

5. Repeats and realleges each and every admission, denial and denial of knowledge or information con-

Answer

tained in paragraphs 1 through 4, inclusive, of this Answer, with the same force and effect as if herein repeated and set forth at length.

6. After the shipments referred to in the complaint had been placed on board the s/s SAM HOUSTON at the port of Djibouti and the said s/s SAM HOUSTON had commenced her voyage to New York and New Orleans, defendant Waterman Steamship Corporation, was advised by the Addis Ababa Bank S.C. that the original bills of lading then outstanding had been lost, stolen or misappropriated, and that defendant, Waterman Steamship Corporation, should not make delivery of said shipment to the holder of said bills of lading. Defendant was further requested to deliver the shipment destined for New York to Messrs. Van Ekris & Stoett, Inc. of 88 Pine Street, New York, and the shipment destined for New Orleans to Messrs. Lonray, Inc. of 77 Water Street, New York, these companies being the rightful purchasers of the said shipments from the true owners.

7. Thereafter, the said s/s SAM HOUSTON arrived at the port of New York where the first shipment of 1,251 bags of coffee was discharged, and the said vessel then proceeded to and arrived at the port of New Orleans where the second shipment of 1,251 bags of coffee was discharged.

8. In obedience to the aforesaid instructions and in consideration of a Bank Guarantee given by the

Answer

Continental Bank International and Addis Ababa Bank, defendant, Waterman Steamship Corporation, gave instructions for the first shipment to be delivered to Van Ekris & Stoett, Inc. and for the second shipment to be delivered to Lonray Inc.

9. On or about October 23, 1975, defendant returned to plaintiff the freight monies which had been paid to it by the plaintiff.

10. Upon information and belief, delivery of the said shipment in the port of New Orleans to Lonray Inc. is proper under Section 12 of the Uniform Bills of Lading Act which is in force in that state, and delivery of the said shipment discharged in New York to Van Ekris & Stoett Inc. is proper under the Uniform Commercial Code, Section 7-403(1)(a) which is in force in New York.

COUNTERCLAIM FOR INTERPLEADER

11. Repeats and realleges each and every admission, denial and denial of knowledge or information contained in paragraphs 1 through 10, inclusive, of this Answer, with the same force and effect as if herein repeated and set forth at length.

12. Upon information and belief, at all times hereinafter mentioned, plaintiff was and still is a citizen of the Republic of Greece, residing in Geneva, Switzerland, with an office and place of business at 2 Rue Ver-

Answer

dene, Geneva, Switzerland.

13. At all times hereinafter mentioned, defendant, Waterman Steamship Corporation, was and still is a corporation duly organized and existing under and by virtue of the laws of the State of New York, having its principal place of business at 120 Wall Street, New York, N. Y. 10005. Defendant, Waterman Steamship Corporation, is the owner of defendant, s/s SAM HOUSTON, a United States flag ocean-going cargo vessel.

14. On or about August 20, 1975, the two shipments of coffee described in the complaint were delivered in Ethiopia to M/s Gellatly Hankey & Company ("Gellatly") as agent for defendant, Waterman Steamship Corporation.

15. On or about August 20, 1975, Gellatly issued two bills of lading for the cargo, one covering the shipment destined for New York ("Bill of Lading No. 1") the other covering the shipment bound for New Orleans ("Bill of Lading No. 2").

16. On or about September 16, 1975, the Addis Ababa Bank S.C. notified Gellatly that the said bills of lading had "either been lost or destroyed". Defendant, Waterman Steamship Corporation, was then further informed that the original bills of lading had been stolen, and that the coffee should not be delivered to the holder of the original bills of lading.

Answer

17. On or about September 25, 1975, defendant received notification from Switzerland that the plaintiff herein held at least one of the said original bills of lading.

18. On or about October 21, 1975, the plaintiff presented to defendant, Waterman Steamship Corporation, at its offices in New York documents which purported to be the originals of bills of lading Nos. 1 and 2 and demanded that Waterman deliver the cargo to plaintiff.

19. On or about October 21, 1975, Continental Bank International, One Liberty Plaza, 91 Liberty Street, New York, N. Y. 10006, demanded on behalf of the Addis Ababa Bank that the shipment discharged in New York not be delivered "to anyone holding the original of said blading and that you give instructions to your personnel or agents to proceed at once with the delivery of above cargo to Van Ekris and Stoett, Inc., N.Y. or their order without waiting for the production of these documents of title."

20. On or about October 28, 1975, the Addis Ababa Bank S.C. and the National Bank of Ethiopia, acting for and joining with the Addis Ababa Bank, by their attorneys, made a claim on the shipment discharged at New Orleans stating:

"The cargo and/or the bill of lading issued thereon is the property of Solomat, P.L.C., which concern has

Answer

assigned the proceeds to the Addis Ababa Bank which, in turn, is obligated to deliver the U.S. dollar proceeds to the National Bank."

21. The shipment discharged at the port of New Orleans has now been delivered to Lonray Inc. The proceeds of the sale of said shipment have been or will be delivered to defendant, Waterman Steamship Corporation, for deposit into the Registry of this Court.

22. The shipment discharged at New York is now in the possession of defendant, Waterman Steamship Corporation, at its terminal and it is the intention of said defendant to move this Court for permission to deliver said shipment to Messrs. Van Ekris & Stoett, Inc. to obtain the proceeds of the sale of said shipment from them, and deposit same into the Registry of this Court.

23. Defendant has no way of knowing which of the aforesaid parties or any of them is the true owner of the coffee shipments which are the subject of this suit without a judicial determination thereof, and defendant has no interest in or claim to the said shipments other than its claim for demurrage, expenses and attorneys' fees in connection therewith.

WHEREFORE, the defendant, Waterman Steamship Corporation, demands:

(a) That this Honorable Court order the below-named six interpleaded defendants to be made party de-

Answer

defendants to respond to the complaint and to this counter-claim:

<u>Name</u>	<u>Address</u>
Addis Ababa Bank S.C. by its attorneys, Graubard, Moskovitz, McGoldrick, Dannett & Horowitz	345 Park Avenue New York, N. Y. 10022
National Bnk of Ethiopia, by its attorneys, Graubard, Moskovitz, McGoldrick, Dannett & Horowitz	345 Park Avenue New York, N. Y. 10022
Solomat, P.L.C. by its attorneys Graubard, Moskovitz, McGoldrick, Dannett & Horowitz	345 Park Avenue New York, N. Y. 10022
Van Ekris & Stoett, Inc. as notification party under Bill of Lading No. 1	88 Pine Street New York, N. Y. 10005
Lonray, Inc., as notifica- tion party under Bill of Lading No. 2	77 Water Street New York, N. Y. 10005
Continental Bank International	One Liberty Plaza 91 Liberty Street New York, N. Y. 10006

(b) That the Court order the plaintiff and the six interpleaded defendants to interplead their respective claims.

(c) That the Court adjudge whether the plaintiff or the six interpleaded defendants or any of them is entitled to the cargo, and the proceeds of its sale.

(d) That the Court order the sale of the coffee shipment discharged at New York to proceed to Messrs. Van

Answer

Ekris & Stoett, Inc., and that the proceeds of the said sale be paid into the Registry of this Court, together with the proceeds of the sale of the coffee discharged at the port of New Orleans which has been sold to Messrs. Lonray Inc.

(e) That upon payment into Court of the proceeds as aforesaid, the Court discharge defendant Waterman Steamship Corporation, and the said s/s SAM HOUSTON from all liability and dismiss this action as to it.

(f) That the Court award to the defendant, Waterman Steamship Corporation, its costs and disbursements, together with attorneys' fees and that the said defendant have such other and further relief as may be just.

Dated: New York, N. Y.,
November 7, 1975

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendants

ANSWER TO COMPLAINT AND TO COUNTERCLAIM
FOR INTERPLEADER OF CONTINENTAL BANK
INTERNATIONAL IN 75 Civ. 5293 (HFW)

Interpleaded Defendant Continen'al Bank International ("CBI"), by its attorneys, Kelley Drye & Warren, for its answer to the complaint and to defendant Waterman Steamship Corporation's ("Waterman") counterclaim for interpleader, alleges as follows:

ANSWER TO PLAINTIFF'S COMPLAINT

1. Admits, upon information and belief, the allegations contained in paragraphs FIRST, THIRD and FIFTH of the complaint.
2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs SECOND, SIXTH, SEVENTH and EIGHTH.
3. Denies knowledge or information sufficient to form a belief as to each and every allegation in paragraph FOURTH of the complaint, except admits, upon information and belief, that on or about August 25, 1975, a cargo of Ethiopian coffee was shipped in two consignments, one consignment destined for New York, the other for New Orleans, and each of which consisted of approximately 1,250 bags of Coffee weighing approximately 75,870 kilograms.

ANSWER TO DEFENDANT WATERMAN'S
COUNTERCLAIM FOR INTERPLEADER

4. With respect to the allegations contained in paragraph 11 of defendant Waterman's counterclaim for

Answer

interpleader, incorporating by reference the allegations of defendant Waterman's answer, defendant CBI pleads as follows:

(1) As to paragraphs 1, 2, 4 and 5 of said answer, no response is required and none is made herein.

(2) Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 3 of said answer.

(3) Admits, upon information and belief, the allegations contained in paragraphs 6 and 7 of said answer.

(4) Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 8 of the said answer, except admits that CBI, together with interpleaded defendant Addis Ababa Bank, S.C. ("Addis") issued "indemnities" to Waterman which are annexed hereto as Exhibits A-1 and A-2.

(5) Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 9 and 10 of said answer.

5. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in

Answer

paragraphs 12, 17, 18 and 20 of the counterclaim.

6. Admits, upon information and belief, each and every allegation in paragraphs 13, 14, 15 and 16 of the counterclaim.

7. Denies each and every allegation contained in paragraph 19 of the counterclaim, except admits that on or about October 22, 1975, CBI, together with Addis, issued the two aforesaid indemnities annexed hereto as Exhibits A-1 and A-2 to Waterman for Bills of Lading Nos. 1 and 2. The indemnity for Bill of Lading No. 1 stated in part "The original bill of lading covering the above shipment is not presently available. It is our desire that you not deliver to anyone holding the original of said blading and that you give instructions to your personnel or agents to proceed at once with the delivery of the above cargo to Van Ekris and Stoett, Inc., N.Y. or their order, without waiting for the production of these documents of title."

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the counterclaim, except admits, upon information and belief, that the shipment discharged at the port of New Orleans has been delivered to Lonray.

9. Admits, upon information and belief, each and every allegation in paragraph 22 of the counterclaim, as of the date of service of the counterclaim on CBI.

Answer

10. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 23 of the counterclaim, except admits that Waterman has demanded payment of freight and demurrage from CBI pursuant to the indemnity annexed hereto as Exhibit A-1, which CBI has not paid on the grounds that Waterman's right to freight and demurrage and the validity of the aforesaid indemnity are issues herein to be determined by this Court in this action.

CLAIMS OF INTERPLEADED DEFENDANT CBI

11. Denies, upon the facts as it now knows them or is informed and believes them to be true, any interest in the coffee, the proceeds of its sale, or in any of the letters of credit or bills of lading issued in connection with the transactions at issue in this action.

WHEREFORE, CBI demands judgment dismissing as against it the complaint and the answer and counterclaim for interpleader and awarding it costs and disbursements, together with a determination by this Court of any issues raised by the parties hereto regarding the validity and enforceability of the two indemnities from CBI and Addis to Waterman, and such other and further relief as may be just.

Dated: New York, New York
January 27, 1976

KELLEY DRYE & WARREN
Attorneys for Interpleaded
Defendant, Continental Bank
International

CLAIM OF WATERMAN STEAMSHIP CORPORATION
AGAINST PROCEEDS AND CROSS-CLAIM IN 75
Civ. 5293 (HFW)

Defendant, Waterman Steamship Corporation, by its attorneys, Haight, Gardner, Poor & Havens, for its claim against the proceeds paid into the Registry of this Court to the credit of this action and against all others who claim an interest in said proceeds, as their interests may appear, alleges as follows:

* * *

4. Freight charges in the amount of \$6,619.92 have been incurred in the carriage of the said shipment, none of which have been paid, although duly demanded.

5. Pursuant to the terms of the bill of lading, the said freight is a charge against the goods. Waterman Steamship Corporation is entitled to its earned freight and hereby makes claim therefor.

6. Waterman Steamship Corporation engaged the services of International Terminal Operating Co., Inc. to act as terminal operator for it in the Port of New York.

7. After its arrival in the Port of New York, the aforesaid shipment of coffee remained on Pier 7, P.A., Brooklyn, New York, operated by International Terminal Operating Co., Inc. until its final delivery, and while on the pier, it thereby incurred demurrage charges due to no fault on the part of Waterman Steamship Corporation, amounting to \$7,590.25 according to the proper tariff

Claim

applicable in the Port of New York, none of which has been paid, although duly demanded.

8. Pursuant to the terms of the bill of lading, demurrage is a charge against the goods, and Waterman Steamship Corporation makes claim for the said demurrage on behalf of its terminal operator, International Terminal Operating Co., Inc., to whom it is due and owing.

9. In addition to the coffee shipment delivered in New York, Waterman Steamship Corporation carried a similar shipment from Djibouti to New Orleans which was delivered to the firm of Lonray Inc.

10. Because of the disputes among the parties in this action to the title and possession of the aforesaid New York coffee shipment and the aforesaid New York coffee shipment, Waterman Steamship Corporation has been forced to defend this lawsuit and to file a defensive interpleader herein, and has incurred legal expenses in the amount of \$10,000, so near as the same may now be estimated which continue to be incurred, and makes claim for same against the proceeds in the Registry of this Court.

FOR A CROSS-CLAIM AGAINST INTERPLEADED DEFENDANT, CONTINENTAL BANK INTERNATIONAL

11. After the aforementioned shipments of coffee had left Djibouti for New York and New Orleans, Waterman Steamship Corporation was advised that the original bills of lading were missing and had been stolen. Waterman was requested by the Addis Ababa Bank and other Ethiopian

Claim

claimants not to deliver the coffee to the holders of the original bills of lading, but to deliver the New York shipment to Messrs. Van Ekris & Stoett, Inc. and the New Orleans shipment to Messrs. Lonray Inc.

12. Shortly thereafter, plaintiff Zervos and his representatives demanded delivery of both shipments to Zervos and Waterman Steamship Corporation, as carrier, was in the position of having conflicting claims to title or possession of the coffee.

13. On or about September 25, 1975, when faced with these conflicting claims, Waterman Steamship Corporation advised the Addis Ababa Bank that it would refer the matter to a United States court in an interpleader action as permitted under Section 7-603 of the Uniform Commercial Code, if satisfactory security from a United States bank was not furnished to it as required under Section 7-601(2) of the Uniform Commercial Code.

14. Thereafter on October 22, 1975, Continental Bank International issued its letter of guarantee referring to the shipment from Djibouti to New York in which letter Continental Bank International agreed that if Waterman Steamship Corporation refused to deliver the coffee to anyone holding the original bill of lading, and gave instructions to its personnel to deliver the said shipment to Messrs. Van Ekris & Stoett, Inc., the said Bank would

Claim

hold it harmless, pay its legal expenses, pay on demand all freights, demurrage and other charges which may be due or may appear to be due and chargeable to the said goods, and perform other obligations stated in the said letter, a copy of which is attached hereto marked Exhibit A.

15. Also, on October 22, 1975, Continental Bank International issued its letter of guarantee referring to the shipment from Djibouti to New Orleans in which letter Continental Bank International agreed that if Waterman Steamship Corporation refused to deliver the coffee to anyone holding the original bill of lading and gave instructions to its personnel to deliver the said shipment to Messrs. Lonray Inc., the said Bank would hold it harmless, pay its legal expenses, and perform other obligations stated in the said letter, a copy of which is attached hereto marked Exhibit B.

16. Immediately upon the issuance of the said letters of guarantee, Waterman Steamship Corporation advised plaintiff Zervos that it would not deliver to him, and instructed its agents to release the New York shipment to Messrs. Van Ekris & Stoett, Inc. and the New York shipment to Messrs. Lonray Inc. The Lonray shipment was released and delivered within a few days thereafter.

17. The New York shipment was never delivered to Messrs. Van Ekris & Stoett, Inc. because Messrs. Van Ekris & Stoett, Inc. refused to take delivery except under

Claim

certain conditions demanded by them of the Addis Ababa Bank. The shipment then remained on Pier 7 until after this suit was commenced when it was finally sold to Greenwich Mills Company in accordance with the Order of this Court.

18. Waterman Steamship Corporation has demanded and received payment of some expenses under the aforementioned letters of guarantee, but when it demanded payment of the freight and demurrage due upon the New York shipment, Continental Bank International refused to pay.

19. Waterman Steamship Corporation has performed all conditions on its part required to be performed and demands that Continental Bank International live up to the aforementioned letters of guarantee, by reimbursing Waterman for the freight and demurrage due on the New York shipment and all counsel fees and other expenses incurred by it in defense of this action, and hold it harmless and indemnify it from any and all liability which might be imposed upon it herein at the conclusion of this action.

CROSS-CLAIM AGAINST LONRAY INC.

* * *

WHEREFORE, Waterman Steamship Corporation demands the following:

1. Payment to it of its freight and demurrage on the shipment discharged and delivered at the Port of New York;

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Claim

2. Payment of its counsel fees and other expenses;

3. That Lonray Inc. be ordered to pay into the Court the proceeds of the sale or value of the coffee discharged and delivered of it at the Port of New Orleans;

4. That Waterman Steamship Corporation recover over against Continental Bank International all sums for which it may be held liable herein, if any, together with all attorneys' fees and costs incurred herein; and

5. For such other and further relief as may be just.

Dated: New York, N. Y.
January 27, 1976.

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendant,
WATERMAN STEAMSHIP CORPORATION

ANSWER TO CROSS-CLAIM OF DEFENDANT
WATERMAN STEAMSHIP CORPORATION BY
CONTINENTAL BANK INTERNATIONAL IN
75 Civ. 5293 (HFW)

Interpleaded defendant Continental Bank International ("CBI"), by its attorneys Kelley Drye & Warren, as and for its answer to the cross-claim of defendant Waterman Steamship Corporation ("Waterman") against CBI, alleges as follows:

1. Admits, upon information and belief, each and every allegation contained in paragraph 11 of said cross-claim.
2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 12, 13 and 16 of said cross-claim.
3. Denies each and every allegation contained in paragraph 14 of the said cross-claim, except admits, and affirmatively alleges, that on or about October 22, 1975, CBI and Addis Ababa Bank S.C. ("Addis") issued the document annexed to said cross-claim as Exhibit A, and respectfully refers the Court to said document for a full and complete statement of its terms and conditions.
4. Denies each and every allegation contained in paragraph 15 of the said corss-claim, except admits, and affirmatively alleges, that on or about October 22, 1975, CBI and Addis issued the document annexed to said cross-claim as Exhibit B, and respectfully refers the

Claim

Court to said document for a full and complete statement of its terms and conditions.

5. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 17 of said cross-claim, except admits, upon information and belief, that the New York shipment was never delivered to Van Ekris & Stoett, Inc. ("Van Ekris") and was instead sold to Greenwich Mills Company in accordance with the Order of this Court.

6. Denies each and every allegation contained in paragraph 18 of said cross-claim, except admits, and affirmatively alleges, that on or about November 17, 1975, CBI paid Waterman the sum of \$396.07; that thereafter Addis notified Waterman that, on the basis of facts first disclosed on November 21, 1975, Addis regarded the document annexed to said cross-claim as Exhibit A as void ab initio, because of certain material facts not disclosed to Addis or CBI before the issuance thereof; that when Waterman thereafter demanded payment of freight and demurrage from CBI, CBI refused to pay on the grounds that Waterman's right to freight and demurrage and the validity of the aforesaid documents were issues tendered to and to be determined by this Court in this action.

7. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph 19 of said cross-claim, except asserts that

Claim

these allegations are issues to be determined by this Court in this action.

WHEREFORE, CBI demands judgment determining both the validity and enforceability of the documents attached to said cross-claim, and whether Waterman has any rights to payments thereunder, together with such other and further relief as may be just and proper.

Dated: New York, New York
March 10, 1976

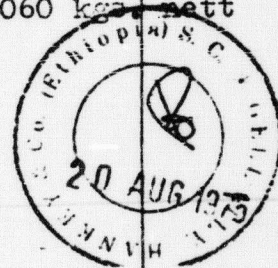
KELLEY DRYE & WARREN
Attorneys for Interpleaded
Defendant, Continental Bank
International

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Exhibit D
Bill of Lading No. 2

WATERMAN-ISTHMIAN LINE
DIVISION OF WATERMAN STEAMSHIP CORPORATION
BILL OF LADING Not Negotiable Unless Consigned to Order

SHIPPER/EXPORTER		EXPORT DOCUMENT NO.	
Solomat Private Limited Company, P. O. Box 57199, Addis Ababa.		EXPORT REFERENCES	
CONSIGNEE Order		FORWARDING AGENT REFERENCES	
NOTIFY PARTY (WITHOUT LIABILITY TO CARRIER) Lonray Inc., 77 Water Street, New York, 10005 N.Y., U.S.A.		POINT AND COUNTRY OF ORIGIN	
PIER		DOMESTIC ROUTING/EXPORT INSTRUCTIONS	
SHIP	BARGE	PORT OF LOADING	ONWARD INLAND ROUTING
SAM HOUSTON	V.4 0400	Djibouti	
PORT OF DISCHARGE	FOR TRANSSHIPMENT TO	BARGE LIFT-ON POINT (where barge placed aboard LASH vessel)	BARGE LIFT-OFF POINT (where barge removed from LASH vessel)
New Orleans			
PARTICULARS FURNISHED BY SHIPPER			
MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT
MULU PRODUCE OF ETHIOPIA CERT. NO. 330 - 417 BAGS 331 - 417 " 332 - 417 "	1251 Bags	About 75 M/Tons of Usual Good Quality "Djimma Coffee Grade 5, Handpicked. ORIGINAL Freight Payable at Destination GOODS ON BOARD	Weight said to be 75,873 kgs. gross 75,060 kgs. nett
<u>1251 BAGS</u>			



35a

Exhibit D

RECEIVED in apparent good order and condition, except as otherwise noted herein, the goods or packages or the containers, vans, trailers, transportable tanks, pallet units or other packages, said to contain the goods described above, to be transported, subject to the terms and conditions of this bill of lading, to the port of discharge and there to be delivered or transhipped as herein provided.

CARRIER'S OPTIONS: Carrier has the right in its sole discretion to carry the above described goods in a general cargo vessel or in a LASH barge and LASH vessel. If carriage is in a LASH barge, Clause 1 shall apply in addition to all other terms and conditions of this bill of lading.

Goods in containers, vans, trailers or transportable tanks may be carried on deck without notice in accordance with the provisions of Clause 6 of this bill of lading.

THE TERMS AND CONDITIONS OF THIS BILL OF LADING ARE CONTINUED ON THE REVERSE HEREOF.

IN WITNESS WHEREOF, there have been executed THREE Bills of Lading, all of the same tenor and date, one of which being accomplished, the others to stand void.

Dated at Djibouti, August 20, 1975
Month Day Year

WATERMAN STEAMSHIP CORPORATION

By [Signature] Ethiopia S. C.

Gallatly [Signature] (Djibouti) S. B/L NUMBER

EXHIBIT D

2 NEW ORLEANS

FREIGHT AND OTHER CHARGES

LBS. @ PER 2000 LBS. \$

LBS. @ PER 2240 LBS. \$

CU. FT. @ PER 40 CU. FT. \$

Freight kilos 75,873 gross ;

at US\$67.25 per 1000 kgs. US\$5102.46

BAF US\$20.00 per ton US\$1517.46

TOTAL US\$6619.92

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Exhibit E
Bill of Lading No. 1



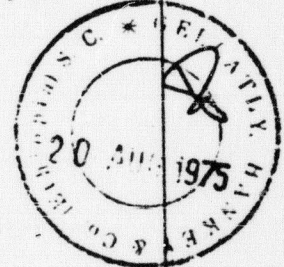
WATERMAN-ISTHMIAN LINE
DIVISION OF WATERMAN STEAMSHIP CORPORATION
BILL OF LADING: Not Negotiable Unless Consigned to Order



SHIPPER/EXPORTER		EXPORT DOCUMENT NO.	
Solomon Mahteme Selasie, P. O. Box 21366, Addis Ababa.		EXPORT REFERENCES	
CONSIGNEE		FORWARDING AGENT REFERENCES	
Order		POINT AND COUNTRY OF ORIGIN	
NOTIFY PARTY (WITHOUT LIABILITY TO CARRIER)		DOMESTIC ROUTING/EXPORT INSTRUCTIONS	
Van Ekris & Stoeet Inc., 88 Pine Street, New York, N.Y. 10005.			
PIER		ONWARD INLAND ROUTING	
SHIP	BARGE	PORT OF LOADING	
SAM HOUSTON	V.4 0158	Djibouti	
PORT OF DISCHARGE	FOR TRANSHIPMENT TO	BARGE LIFT-ON POINT (where barge placed aboard LASH vessel)	BARGE LIFT-OFF POINT (where barge removed from LASH vessel)
New York			

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT
MUIU PRODUCE OF ETHIOPIA CERT. NO. 289 - 417 BAGS 318 - 417 " 320 - 417 "	1251 Bags	About 75 M/Tons of "DJIMAH" Coffee, Grade 5, Usual Good Quality Handpicked. ORIGINAL Freight Payable at Destination GOODS ON BOARD	Weight said to be 75,873 kgs. gross 75,060 kgs. nett	
1251 BAGS				



37a

Exhibit E

RECEIVED in apparent good order and condition, except as otherwise noted herein, the goods or packages or the containers, vans, trailers, transportable tanks, pallet units or other packages, said to contain the goods described above, to be transported, subject to the terms and conditions of this bill of lading, to the port of discharge and there to be delivered or transhipped as herein provided.

CARRIER'S OPTIONS: Carrier has the right in its sole discretion to carry the above described goods in a general cargo vessel or in a LASH barge and LASH vessel. If carriage is in a LASH barge, Clause 1 shall apply in addition to all other terms and conditions of this bill of lading.

Goods in containers, vans, trailers or transportable tanks may be carried on deck without notice in accordance with the provisions of Clause 6 of this bill of lading.

THE TERMS AND CONDITIONS OF THIS BILL OF LADING ARE CONTINUED ON THE REVERSE HEREOF.

IN WITNESS WHEREOF, there have been executed THREE Bills of Lading, all of the same tenor and date, one of which being accomplished, the others to stand void.

Dated at Djibouti, August 20, 1975
Month Day Year

WATERMAN STEAMSHIP CORPORATION

By [Signature] (Ethiopia) S. C.

(Djibouti) B/L NUMBER

EXHIBIT E

1 NEW YORK

FREIGHT AND OTHER CHARGES

LBS. @	PER 2000 LBS. \$	
LBS. @	PER 2240 LBS. \$	
CU. FT. @	PER 40 CU. FT. \$	
Freight kilos 75,873 gross at		
US\$67.25 per 1000 kilos	US\$	5,102.46
BAF US\$20.00 per ton	US\$	1,517.46
TOTAL	US\$	6,619.92

38a

Exhibit H

Letter of September 3, 1975

ሰላማዊ ጥገና ሚኒስቴር
SOLOMON MAHTEME SELASSIE
CAPITAL ETH. \$ 250.000 - REG. No. 9827/62
EXPORT-IMPORT-COMMISSION AGENT
P. O. Box 21366, ADDIS ABABA, ETHIOPIA

Cable: NOLOMAT
Phone: } 15 33 41 - 15 33 42 (dir.)
 } Off. 15 33 53 - 15 38 86
 } Res. 44 88 86
Telex: 21131

ADDIS ABABA September 3, 1975

SMS/747/75

Geilatly Hankey & Co. Ltd. (Ethiopia)
ADDIS ABABA

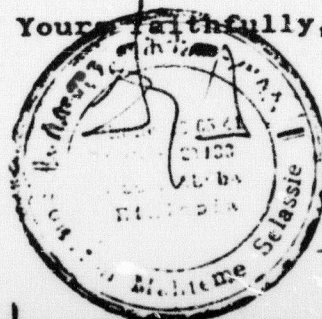
Dear Sirs,

Re: 150 Tons Coffee Shipped per ss "Sam Houston"

The original Bill of Ladings Nos. 2 New Orleans, 3 New York dated 20th August, 1975 for 75Tons Coffee^{each} respectively shipped from Djibouti have been stolen. Therefore, we are request you hereby to kindly suspend the validity of these bills of ladings and to issue us fresh Bills of Ladings in replacement of same. We also request you to kindly instruct carrier to safeguard the goods on our behalf and on behalf of the Ethiopian Government until we obtain fresh bill of ladings.

Thank you for your cooperation.

Yours faithfully,



SIGNED

IM/at

39a

Exhibit I
Letter of September 4, 1975

Sept.
4th August, 1975

Messrs.,
Addis Ababa Bank S.C.,
Head Office,
Letter of Credit Dept.,
Addis Ababa.

Dear Sirs,

We have just been advised by M/s. Solomat Pvt. Ltd. Co. that Original B/L No. 2/NEW ORLEANS covering 1251 bags Coffee shipped from Djibouti to New Orleans on the s.s. "SAM HOUSTON" has been stolen from their Office and requested us to suspend the validity of this Bill of Lading and to issue them a fresh one.

We are passing the above just for your information.

Yours faithfully,
For Gellatly, Hankey & Co. (Ethiopia) S.C.


Branch Manager

BA/kb

40a

Exhibit J
Letter of September 4, 1975

Sept.
4th August, 1975

Messrs.,
Commercial Bank of Ethiopia,
Addis Ababa Branch,
Letter of Credit Dept.,
Addis Ababa.

Dear Sirs,

We have just been advised by M/s. Solomat Pvt. Ltd. Co. that Original B/L No. 1/NEW YORK covering 1251 bags Coffee shipped from Djibouti to New York on the s.s. "SAM HOUSTON" has been stolen from their Office and requested us to suspend the validity of this Bill of Lading and to issue them a fresh one.

We are passing the above just for your information.

Yours faithfully,
For Gellatly, Hankey & Co. (Ethiopia) S. C.


Branch Manager

BA/kb

41a

Exhibit K
Letter of September 5, 1975

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ADDIS ABABA BANK

Cable Address: ADISBANK
Code Peterson's 4th
Telex 21058
Tel. { Managing Director 448044
Office 44 82 85 - 87
44 85 18 - 19

(SHARE COMPANY)
HEAD OFFICE
P. O. Box 751
ADDIS ABABA
ETHIOPIA

Reply is to be addressed to
"THE MANAGING DIRECTOR"

Our Ref: AAB/2421/75

Your Ref:

Addis Ababa. 5th September, 1975.

M/s Gellately Hankey & Co. (Eth.) Ltd.,
P.O. Box 482,
Addis Ababa.

Recd 5/9
1600 hrs.

Dear Sirs:

- Re: 1. B/L No. 2 New Orleans dated August 20, 1975
75 tons coffee
2. B/L No. 1 New York dated August 20, 1975
75 tons coffee

Further to our discussion of 4-9-75 in respect of the bills of lading in caption, we wish to confirm officially that Ato Solomon Mahteme Selassie has deceitfully obtained the above bills of lading and crossed the Ethiopian boarder illegally. The purchase of the merchandise covered by these bills of lading was fully financed by our bank.

Therefore, please transmit urgent telex messages to your principals and do every thing possible to prevent Ato Solomon from negotiating these instruments in order to protect our interest. This is a delicate matter of national concern as well.

We hold you harmless and indemnified against any liabilities, claims, risks and damages which you may sustain consequent upon your taking action on the basis of this letter.

If you later on deem it necessary, we can make arrangements to back our guarantee via our international correspondent banks in London and New York.

"Ethiopia Tikdem"

Authorised Signatures

42a

Exhibit L
Addis Agreement of September 16, 1975

GP-308

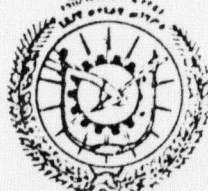


አ.አ.ባ. : አበባ : ባንክ
ADDIS ABABA BANK

HEAD OFFICE

RAS DESTA DAMTEW AVENUE
P. O. Box 751
ADDIS ABABA

ETHIOPIA



የጥብረተሰብአዊት ኢትዮጵያ ጊዜያዊ መንግሥት
The Provisional Military Government of Socialist Ethiopia

አዲስ አበባ ባንክ
Addis Ababa Bank

Reply is to be addressed to:
"THE GENERAL MANAGER"

Cable Address: ADISBANK
Code Peterson's 4th
Telex 21058
Tel. General Manager 44 88 44
Office 44 82 85 - 87
44 85 18 - 19

Our Ref: AAB/2491/75

Your Ref:

M/s Collatly Hankey & Company,
P.O. Box 482,
Addis Ababa.

Addis Ababa 16th September, 1975

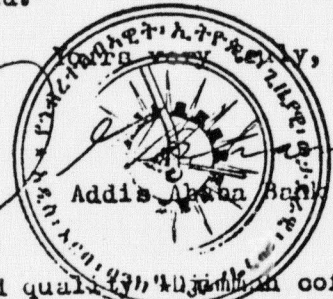
Dear Sirs:

Re: Vessel: Sam Houston From: Djibouti
To : New Orleans B/L No. 2/New Orleans

On or about 20th August, 1975, your office issued the above bills of lading.

The original bills of lading have either been lost or destroyed and, therefore, we request that three new negotiable bills of lading of the same tenor be issued.

In consideration of the compliance by Waterman Steamship Corporation, and its agents with this request, we agree to protect, indemnify and save harmless yourselves, your agents, the carrier, and the vessel transporting the goods, its owner, charterer, master and agents against any and all claims and demands of any kind and nature arising out of the issuance of said new negotiable bills of lading, as well as against and all loss, damage and expense, including the cost of court and counsel fees which may arise or be incurred by reason of any such claims and demands and we further agree to deliver to Waterman Steamship Corporation or Waterman's agent the original bills of lading if same shall ever be found.



Addis Ababa Bank

DESCRIPTION OF SHIPMENT

1251 bags about 75 m/tons of usual good quality ~~Arabica~~ coffee, Grade 5, handpicked".

MARKS

Mulu/produce of Ethiopia, Cert. No.

330 - 417 bags
331 - 417 bags
332 - 417 bags
1251 bag

We confirm the above ~~marks~~ of ~~loading~~ are ours.



43a

Exhibit M

Addis agreement of September 16, 1975



አ.አ.ባ. : አ.በ.ባ. : ባ.ን.ክ.
ADDIS ABABA BANK

Cable Address: ADISBANK
Corie Peterson's 4th
Telex 21058
Tel. General Manager 44 88 44
Office 44 82 85 - 87
44 85 12 - 19

HEAD OFFICE
RAS DESALEGN AVE



Reply is to be addressed to:
"THE GENERAL MANAGER"

Our Ref: AAB/2490/75

Your Ref:

16th September, 1975.

የጥብረተሰብ አዋጅ አ.ተ.የ.አ.የ.ሪ. ፖ.ሪ.ፖ.ሪ. ፖ.ሪ.ፖ.ሪ.
The Provisional Military Government of Socialist Ethiopia

M/s Gellatly Hankey & Company,
P.O. Box 482,
Addis Ababa.

አ.አ.ባ. ባ.ን.ክ.
Addis Ababa Bank

Dear Sirs:

Re: Vessels: Sam Houston From: Djibouti
To: New York B/L No.: 1/New York

On or about 20th August, 1975, your office issued the above bills of lading.

The original bills of lading have either been lost or destroyed and, therefore, we request that three new negotiable bills of lading of the same tenor be issued.

In consideration of the compliance by Waterman Steamship Corporation, and its agents with this request, we agree to protect, indemnify and save harmless yourselves, your agents, the carrier, and the vessel transporting the goods, its owner, charterer, master and agents against any and all claims and demands of any kind and nature arising out of the issuance of said new negotiable bills of lading, as well as against and all loss, damage and expense, including the cost of court and counsel fees which may arise or be incurred by reason of any such claims and demands and we further agree to deliver to Waterman Steamship Corporation or Waterman's agents the original bills of lading if same shall ever be produced.



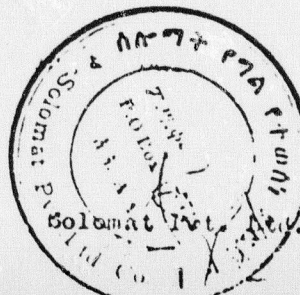
DESCRIPTION OF SHIPMENT

1251 bags about 75 m/tons of "Djimnah coffee, Grade 5, usual good quality handpicked"

MARKS

Mulu/produce of Ethiopia, Cert. No.

289 - 417 bags
318 - 417 bags
320 - 417 bags
1251 bags



We confirm the above bills of lading are ours

44a

Exhibit N
Duplicate bill of lading No.14

WATERMAN-ISTHMIAN LINE
DIVISION OF WATERMAN STEAMSHIP CORPORATION
BILL OF LADING - Not Negotiable Unless Consigned to Order

SHIPPER/EXPORTER Colonat Private Limited Company, P.O. Box 5719, Addis Ababa.		EXPORT DOCUMENT NO.	
CONSIGNEE Order		EXPORT REFERENCES	
NOTIFY PARTY (WITHOUT LIABILITY TO CARRIER) Monray Inc, 77 Water Street, New York 10005 N. Y. U. S. A.		FORWARDING AGENT REFERENCES	
SHIP		POINT AND COUNTRY OF ORIGIN	
BARGE C700		DOMESTIC ROUTING/EXPORT INSTRUCTIONS	
PORT OF LOADING Djibouti	ONWARD INLAND ROUTING	BARGE LIFT-ON POINT (where barge placed aboard LASH vessel)	
PORT OF DISCHARGE New Orleans	FOR TRANSHIPMENT TO	BARGE LIFT-OFF POINT (where barge removed from LASH vessel)	

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT
ETHIOPIA PRODUCE OF ETHIOPIA CERT. NO. 330-417 " " 331-417 " " 332-417 1251 Bags =====	1251 Bags	about 75 1/2 Tons of usual good quality "ETHIOPIA" Coffee grade 5, hand picked. GOODS ON BOARD at Destination COPIATE ORIGINAL	75.873 kgs. gross 75.060 kgs. nett	
Bill of Lading issued in Lieu original Bill of Lading said to be lost by Shipper "				

45a

Exhibit N

RECEIVED in apparent good order and condition, except as otherwise noted herein, the goods or packages or the containers, vans, trailers, transportable tanks, pallet units or other packages, said to contain the goods described above, to be transported, subject to the terms and conditions of this bill of lading, to the port of discharge and there to be delivered or transhipped as herein provided.

CARRIER'S OPTIONS: Carrier has the right in its sole discretion to carry the above described goods in a general cargo vessel or in a LASH barge and LASH vessel. If carriage is in a LASH barge, Clause 1 shall apply in addition to all other terms and conditions of this bill of lading.

Goods in containers, vans, trailers or transportable tanks may be carried on deck without notice in accordance with the provisions of Clause 6 of this bill of lading.

THE TERMS AND CONDITIONS OF THIS BILL OF LADING ARE CONTINUED ON THE REVERSE HEREOF.

FREIGHT AND OTHER CHARGES

LBS. @	PER 2000 LBS. \$
LBS. @	PER 2240 LBS. \$
CU. FT. @	PER 40 CU. FT. \$
Freight kilos 75.873 gross \$	
at 66/67.25	66/67.25
at 66/20.00 per ton	66/20.00
TOTAL 66619.92	

IN WITNESS WHEREOF, there have been executed THREE Bills of Lading, all of the same tenor and date, one of which being accomplished, the others to stand void.

Dated at Bilauti, 20th August, 1975
 Month Day Year

WATERMAN STEAMSHIP CORPORATION

By [Signature] S. A. B/L NUMBER

EXHIBIT N 14/11/11 ORIGIN

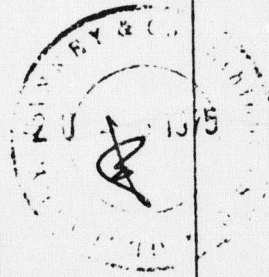
46a

Exhibit 0
Duplicate bill of lading No.11

WATERMAN-ISTHMIAN LINE
DIVISION OF WATERMAN STEAMSHIP CORPORATION
BILL OF LADING Not Negotiable Unless Consented to by Shipper

SHIPPER'S ORDER Colonat Private Limited Company, P. O. Box 5019, Addis Ababa.		EXPORT DOCUMENT NO	
CONSIGNEE Order		EXPORT REFERENCES	
NOTIFY PARTY (WITHOUT LIABILITY TO CARRIER) Van Ekris & Stoet Inc, 88 Pine Street New York, N. Y. 10005.		FORWARDING AGENT REFERENCES	
PIER		POINT AND COUNTRY OF ORIGIN	
SHIP S.S. "SILVER HOUND" V.4		ONWARD INLAND ROUTING	
PORT OF DISCHARGE New York		FOR TRANSHIPMENT TO	
PORT OF LOADING Djibouti		BARGE LIFT-ON POINT (where barge placed aboard LASH vessel)	
		BARGE LIFT-OFF POINT (where barge removed from LASH vessel)	

PARTICULARS FURNISHED BY SHIPPER

MARKS AND NUMBERS	NO. OF PKGS.	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT
MUIU PRODUCE OF ETHIOPIA CERT. NO. 289-417 Bags " " 318-417 " " " 320-417 " 1251 Bags	1251	Bags about 75 H/Tons of "DETHIUM" Coffee grade 5, usual good quality handpicked. GOODS ON BOARD Bill of Lading issued in Lieu original Bill of Lading said to be lost by Shipper" DATE SIGNATURE	75.873 kgs. gross 75.060 kgs. nett	

47a

Exhibit 0

RECEIVED in apparent good order and condition, except as otherwise noted herein, the goods or packages or the containers, vans, trailers, transportable tanks, pallet units or other packages, said to contain the goods described above, to be transported, subject to the terms and conditions of this bill of lading, to the port of discharge and there to be delivered or transhipped as herein provided.

CARRIER'S OPTIONS: Carrier has the right in its sole discretion to carry the above described goods in a general cargo vessel or in a LASH barge and LASH vessel. If carriage is in a LASH barge, Clause 1 shall apply in addition to all other terms and conditions of this bill of lading.

Goods in containers, vans, trailers or transportable tanks may be carried on deck without notice in accordance with the provisions of Clause 6 of this bill of lading.

THE TERMS AND CONDITIONS OF THIS BILL OF LADING ARE CONTINUED ON THE REVERSE HEREOF.

IN WITNESS WHEREOF, there have been executed THREE Bills of Lading, all of the same tenor and date, one of which being accomplished, the others to stand void.

Dated at Djibouti, 20th August, 1975.
Month Day Year

WATERMAN STEAMSHIP CORPORATION

By [Signature]

B/L NUMBER

11/NEW YORK

EXHIBIT 0

FREIGHT AND OTHER CHARGES

LBS. @ PER 2000 LBS. \$

LBS. @ PER 2240 LBS. \$

CU. FT. @ PER 40 CU. FT. \$

Freight kilos 75.873 Gross

at US\$67.25 US\$ 5102.46

US\$20.00 per ton US\$ 1517.46

US\$ 6619.92

TOTAL ... \$

48a

Exhibit Q
Telex dated September 24, 1975

GA
8897621037+
235949 WACOR UR
24 1452 107307
TELEXTRA RCA UR
235949 WACOR UR
09/24 101396
GA TEXT

Def-PG-4pm
10f2

SEPTEMBER 24, 1975

ADDIS ABABA BANK ✓
ADDIS ABABA (ETHIOPIA)
TLX 976-21037

NBRO1

S. S. SAM HOUSTON

DJIBOUTI - NEWYORK/NEWORLEANS

ORIGINAL BS/L NOS. 1 (NY) 2 (NOLA)

REISSUED BS/L NOS. 11 (NY) 14 (NOLA)

ON SEPTEMBER 23, 1975 WE RECEIVED THE FOLLOWING TELEX FROM UNITED OVERSEAS BANK (GENEVA):

+HOLDING BILL OF LADING NO.2 DATED 20.8.75 DJIBOUTI/
NEWORLEANS. PLEASE TELEX BACK ADVISING US EXPECTED DATE OF
ARRIVAL OF VESSEL AT NEWORLEANS.+

WE ALSO RECEIVED A TELECON ON SEPTEMBER 23RD FROM
NEWYORK CUSTOMS BROKER NATURAL NYDEGGER ADVISING THAT THEIR
SWISS PRINCIPALS WERE HOLDING NEWYORK B/L NO.1.

WE ADVISED BOTH UNITED OVERSEAS BANK AND NATURAL NYDEGGER
BY TELECON AND TELEX THAT (1) BLADINGS WERE ALLEGEDLY STOLEN (2)
THAT WE WOULD NOT RELEASE CARGO UNDER THEM, AND (3) THAT THEY
SHOULD CONTACT SHIPPER SOLOMAT TO CLARIFY SITUATION.

LET THIS CONFIRM THAT WE WILL RELEASE CARGO TO CONSIGNEES LONRAY, INC. AND VAN EKRIS AND STOETT, BUT ONLY UPON RECEIPT OF GUARANTEE FROM MAJOR U. S. BANK OR BONDING COMPANY IN THE SUM OF DLRS 300,000.00 TO COVER F. M. V. OF CARGO, ATTORNEY'S FEES, INTEREST AND COURT COSTS.

WE HAVE CONTACTED CONTINENTAL BANK INTL (NY) BUT THEY ONLY HAVE INSTRUCTIONS TO ISSUE GUARANTEE TO NEDLLOYD S.S. CO., NOT WATERMAN.

FINALLY, IT IS IMPERATIVE THAT REISSUED BLADINGS NOS. 11 AND 14 BE RETURNED TO WATERMAN FOR CANCELLATION. WE WILL ISSUE SET OF BLADINGS NOS. 1 AND 2 STAMPED +DUPLICATE,+ AGAINST WHICH WE WILL DELIVER CARGO UPON RECEIPT OF U. S. GUARANTEE.

WATERMAN CONFIRMS THEIR WILLINGNESS TO COOPERATE WITH YOUR BANK AND SHIPPER AND, IN TURN, REQUESTS CONFIRMATION THAT YOU WILL PROVIDE REQUESTED U. S. GUARANTEE AND RETURN REISSUED BLADINGS.

WATERMAN STEAMSHIP CORPORATION
120 WALL STREET
NEWYORK, NEWYORK ZIP 10005
F. M. SEVEKOW
VICE PRESIDENT - GENERAL COUNSEL
END

TELEXTRA RCA UR

235949 WACOR UR

CALL ACCEPTED
0006.3

URGENT Global Telegram

URGENT Global Telegram

URGENT Global Telegram

URGENT Global Telegram

50a

Exhibit R

Telex dated September 25, 1975

WUIB
WATERMAN66274
97621037"
0092546 1327 09/25
QDPE

25 20:26

ETIOBANK ADDIS A

WATERMAN66274

SEPTEMBER 25, 1975

ADDIS ABABA BANK
ADDISABBA (ETHIOPIA)
TLX 976-21037

NBR02

SUBJECT: DJIBOUTI - NEWYORK/NEWORLEANS
ORIGINAL BS/L NOS. (NY) 14 (NEWORLEANS)
REISSUED BS/L NOS. 11 (NEWYORK) 14 (NEWORLEANS)

WE ARE CONCERNED BY YOUR FAILURE TO REPLY TO OUR
SEPTEMBER 24 TELEX REQUESTING CONFIRMATION THAT BLADINGS
11 AND 14 WOULD BE RETURNED TO US FOR CANCELLATION AND THAT
SECURITY IN A UNITED STATES BANK WOULD BE ESTABLISHED AS A
REQUIREMENT FOR DELIVERY.

WE HAVE NOW RECEIVED A TELEX FROM A MR. NIKIFOROS ZERVOS,
C/O NATURAL S. A., TRANSPORTS INTERNATIONAL, ATTENTION MR.
DESPLANS TELEX 23432. MR. ZERVOS ADVISES THAT HE IS HOLDING
B/L NO. 1 AND REQUESTS OUR CONFIRMATION THAT WE WILL DELIVER
CARGO TO HIM. HE ALSO ALLEGES THAT HE HAS SIGNED AFFIDAVITS
FROM MR. SOLOMON MAHTEME SELASSIE IN WHICH SOLOMON CLAIMS
TO BE THE SOLE OWNER OF THE COFFEE COVERED BY B/L NO. 1.

OUT- PG-2 PM
1 of 2

Western Union International, Inc. Western Union International, Inc. Western Union International, Inc.

International Telex Western Union International, Inc. International

51a

Exhibit R

PLEASE CONTACT MR. ZERVOS IMMEDIATELY AND NOTIFY LOCAL
GENEVA POLICE AUTHORITIES OF SITUATION IN ORDER TO PREVENT
BLADINGS FROM BEING NEGOTIATED TO OTHER PARTIES.

UNLESS YOU COMPLY WITH OUR ABOVE REQUESTS FOR RETURN
OF BLADINGS 11 AND 14 AND POSTING OF U. S. SECURITY,
WE SEE NO OTHER ALTERNATIVE BUT TO REFER MATTER TO UNITED
STATES COURT FOR ADJUDICATION, WHICH WILL DELAY DELIVERY
INDEFINITELY.

WATERMAN STEAMSHIP CORPORATION
120 WALL STREET
NEWYORK, NEWYORK ZIP 10005
CABLE WACORSHIP NYK
F. M. SEVEKOW, JR.
END

⊕
ETIOBANK ADDIS A

WATERMAN66274

.....
04.7 MIN

OUT- PG- 2 PM
2 of 2

Western Union International, Inc.  international

Telex  Western Union International, Inc.  international

52a

Exhibit S

Telex dated September 26, 1975

RCA1234 264

235949 WACOR UR

MOM

⊕

235949 WACOR UR⊕

235949 WACOR UR

ADISBANK ADDIS

ADISBANK ADDIS

WATERMAN STEAMSHIP CORPORATION NEW YORK

26 - 9 - 75

ATTN. F.M. SEVEKOW JR.

YOURS 25TH PLEASE EXPEDITE ARRANGEMENT WITH CONTINENTAL BANK N.Y. TO DELIVER GOODS TO VAN EKRIS AND LONARY INC. STOP WHEN THESE FORMALITIES ARE COMPLETS WE WILL INSTRUCT THE OPENING BANKS IN NEW YORK TO SURRENDER TO YOU BLADING NOS. 11 AND 14 FOR CANCELLATION STOP WE HAVE TELEXED MR. ZERVOUS EXPLAINING TO HIM TO REFRAIN ROM DEALINGS IN THIS MATTER AS HE IS HOLDING BLADINGS STOLEN BY EX-MANAGER OF SOLOMAT P.L.C. WHO ILLEGALLY LEFT THE COUNTRY.

WATEMAN STEAMSHIP CORPORATION NEW YORK
F.M. SEVEKOW, VIC PRESIDENT - GENERAL COUNSEL

URGENT

WE UNDERSTAND BY LATE LAST NIGHT YOU HAVE NOT BEEN CONTACTED BY CONTINENTAL BANK INTERNATIONAL STOP WE HAVE TELEX THEM AT 18:02 HOURS OUR TIME 25TH SEPTEMBER ATTENTION MR. A. GRIMBERGEN, VICE PRESIDENT AND HAVE GIVE THEM FULL AUTHORITY TO DISCUSS TERMS OF DOCUMENTS YOU REQUIRE TO ENSURE DELIVERY OF GOODS TO RIGHTFUL BUYERS I.E. VAN EKRIS STOETTIEM. AND LONARY INC. STOP ANXIOUSLY AWAITING DEVELOPMENTS STOP MR. SOLOMON APPEARS TO BE CONTACTING CERTAIN PARTIES IN GENEVE IN A LAST DESPERATE ATTEMPT BUT WE HAVE WARNED MAJOR BANKS INSWITZERLAND STOP REGARDS ADISBANK.

⊕

235949 WACOR UR

ADISBANK ADDIS⊕

235949 WACOR UR PLS DO U REC WELL

YES REC OK

OK THKURDIR

Global Telegram

Global Telegram

Telegram

Global Telegram

Global Telegram

53a

Exhibit T
Telex dated September 30, 1975

"Z
WU
97621058"
0164849 1115 09/30

30 18:15

ADISBANK ADDIS

WATERMAN66274

30.09.75

ADDISABABA BANK
ADDISABBA (ETHIOPIA)

NBRO4

WE RECEIVED THE FOLLOWING TELEX THIS A.M.:

QUOTE SUBJECT: SS SAM HOUSTON
B/L NO. 1 DJIBOUTI/NY
DATED AUGUST 20, 1975

RE: YOUR TELEX OF SEPTEMBER 26TH, 1975

AS PER MR. N. ZERVOS' INFORMATION, HE PURCHASED THE GOODS AS PER
SOLOMON MAHTEME SELASSIE'S INVOICE DATED AUGUST 25TH AND
OBTAINED THE ORIGINAL BS'/L NO. 1 AGAINST FULL PAYMENT OF
THIS INVOICE. WE UNDERSTAND THAT HIS LAWYER IS NOW IN CHARGE
OF THIS MATTER. REGARDS. S. DESPLANDS UNQUOTE
WE UNDERSTOOD YOU ENDEAVORING TO OBTAIN RETURN OF B/L NO.1
FROM MR. ZERVOS. PLEASE ADVISE SOONEST STATUS OF THESE EFFORTS.
REGARDS.

WATERMAN STEAMSHIP CORPORATION
F. M. SEVEKOW, JR.
CABLE: WACORSHIP NYK
END

+++
WATERMAN66274
+++

03.5 MIN

Out - PG - 2pm

Western Union International, Inc. **WU** International Telex **WU**

Western Union International, Inc. **WU** International Telex **WU** Western Union International

54a

Exhibit U
Telex dated October 2, 1975

11AM File Copy

IN-PG-11AM

RCA0936 02
235949 WACOR UR
235949 WACOR UR
ADISBANK ADDIS
235949 WACOR UR

WATERMAN STEAMSHIP CORP. , NY

02 - 10 - 75
ATTN. F. M. SEVEKOW, JR.

YOURS 30TH B/L 1.NY SS SAM HOUSTON WE HAVE TELEX ADVISED MR ZERVOS EXPLAINING CIRCUMSTANCES UNDER WHICH BLADINGS WERE STOLEN AND ALSO CONTACTED MAJOR EUROPEAN BANKS STOP BY THE WAY WE WONDER WHY IF SO CALLED ZERVOS IS BIG ENOUGH TO DEAL IN SUCH SUBSTANTIAL AMOUNTS WHY DOES HE COMMUNICATE WITH YOU C/O OF ANOTHER OFFICE STOP PRESUMABLY IT COULD BE A DISGUISED NAME STOP AT ANY RATE YOU SHOULD BE FULLY SECURED BY BANK CUARANTEE WHICH WILL BE ISSUED IN YOUR FAVOUR BY CONTINETAL BANK INTERNATIONAL NY. STOP WE ARE CONFIDENT YOU WILL FULLY COOPERATE IN THIS MATTER BEST REGARDS

ADDISBANK.
235949 WACOR UR
ADISBANK ADDIS
235949 WACOR UR
ADISBANK ADDIS

Global Communications

Global Communications

Global Communications

55a

Exhibit V
Telex dated October 3, 1975

GA
8897621058
235949 WACOR UR
03 1525 103249
TELEXTRA RCA UR
235949 WACOR UR
10/03 101314
GA TEXT

11/6.00
OUT - PG-6PM

OCTOBER 3, 1975

TO: ADDIS ABABA BANK
ADDIS ABBA (ETHIOPIA)

TELEX NO. 976-21058

NBRO07

SUBJECT: B/L 1/NEW YORK 8.20.75 SAM HOUSTON
B/L 2/NEW ORLEANS 8.20.75 SAM HOUSTON

CONTINENTAL BANK ADVISES THAT YOU ARE CONCERNED RE THE AMOUNT OF U.S. DOLLARS 400 THOUSAND INDEMNITY WE HAVE REQUESTED ON EACH OF THE ABOVE BLADINGS.

WE CONSIDER THE AMOUNT OF THE INDEMNITY QUITE MODEST. SUM DEMANDED IS BASED UPON 200 PERCENT OF FOB VALUE PLUS ADDITIONAL AMOUNT TO COVER DAILY OPERATING COSTS IN THE EVENT THAT VESSEL IS DETAINED DUE TO ARREST OR SEIZURE.

YOU REALIZE OF COURSE THAT SUBJECT VESSEL CAN BE ARRESTED TO SATISFY CLAIMS ARISING ON BOTH BLADINGS. UNLESS PROMPT RELEASE OF

THE VESSEL IS SECURED, AMOUNT OF INDEMNITY SOUGHT COULD POSSIBLY BE EXCEEDED.

WE HAVE INCURRED SUBSTANTIAL EXPENSE IN COOPERATING WITH YOU AND CONTINENTAL BANK AND IN KEEPING ALL PARTIES INVOLVED FULLY INFORMED OF DEVELOPMENTS.

PLEASE ADVISE BY NO LATER THAN OCTOBER 6 WHETHER YOU WILL POST THE SECURITY REQUESTED AS MR. N. ZERVOS MAY TAKE LEGAL ACTION TO SEIZE CARGO.

BEST REGARDS.

WACORSHIP - NY - F. M. SEVEKOW, JR.

TELEXTRA RCA UR

235949 WACOR UR

CALL ACCEPTED
0003.7

56a

Exhibit W
Telex dated October 4, 1975

IN-PG-9AM

RCA1117/045
235949 WACOR UR
ZCZC PTZ5901 RMG7581 ITC739 ETR337 ADU720 ASC232/8029
URPW HL ETAD 059
ADDISABABA 59 4/10 1730

LT
WATERMAN STEAMSHIP CORPORATION
TELEX 235949
WACOR UR NEWYORK

" "
URGENT ATT. F.M. SEVEKOW JR YOURS 3RD-RE B/L 1 NY AND 2
NEW ORLEANS SS SAM HOUSTON ARRANGEMENTS ARE BEING MADE WITH QQQ
AUTHORITIES OF NATIONAL BANK OF ETHIOPIA TO ISSUE REQUIRED
GUARANTEE AS MATTER IS SENSITIVE AND INVOLVES EXCHANGE
CONTROL REGULATIONS OF THE COUNTRY STOP REGARDS ADDIS BANK
ADISBANK

COL 235949 3RD 1 2

WATERMAN NYK

2333 EDT

CONFIRMATION COPY INCOMING CABLE

ZCZC TLA262 VIA ITT XG1157
UINY BN UIGA 007
SS ALEX STEPHENS/WJEN VIA ITT GALVESTONRADIO/KLC 7 2 0250GMT

VACORSHIP
NEWYORK

ETA BALTIMORE 0500 EIGHTH
MASTER

COL: VACORSHIP 0500

FBI Global Communications

FBI Global Communications

IN-PG-9AM

Continental Bank International guaranty
Of October 22, 1975 for bill of lading
No. 1 (Exhibit AA to Sevekow Affidavit)



October 22, 1975

CONTINENTAL BANK INTERNATIONAL

ONE LIBERTY PLAZA · 91 LIBERTY STREET, NEW YORK, NEW YORK 10006

TO: SS SAM HOUSTON AND WATERMAN STEAMSHIP
CORPORATION, ITS SUBSIDIARIES, AF-
FILIATES, AGENTS, EMPLOYEES, AND THEIR
SUCCESSORS IN INTEREST (hereinafter
referred to collectively as "you")

Re: SS SAM HOUSTON
Bill of Lading No. 1
Dated August 20, 1975

Quantity and Contents: 1,251 Bags said to contain
75 Metric Tons of Djimmah Coffee,
Grade 5, Hand-Picked.

Shipped by: Solomon Mahteme Selassie

Port of Shipment: Djibouti

Port of Discharge: New York

Shipping Remarks: Marks:

MULU
PRODUCE OF ETHIOPIA
CERT. 289-417 BAGS
" 318-417 "
" 320-417 "

The original bill of lading covering the above shipment is not presently available. It is our desire that you not deliver to anyone holding the original of said blading and that you give instructions to your personnel or agents to proceed at once with the delivery of above cargo to Van Ekris and Stoett, Inc. N.Y. or their order, without waiting for the production of these documents of title.

In consideration of your complying with our request, we hereby guarantee and undertake to hold you and each of you harmless and keep you and each of you indemnified against all claims and demands of any kind and nature, arising from your compliance with this request, or under the above bill of lading or other bills of lading issued covering said cargo, as well as against all loss, damage and expense, including the cost of court and counsel fees, which may arise or be incurred by reason of said compliance, under said bladings, or claims and demands arising therefrom.

If possible, any bladings other than the above issued by the carrier, relating to this cargo, will be cancelled upon delivery of the said cargo.

Exhibit AA
Continental Bank International gauranty



If a claim should be raised against you as the consequence of your compliance with this request, or if any proceeding should be commenced in this respect, we undertake to provide you from time to time with sufficient funds to meet your outlays to such proceedings.

In case the vessel or any property belonging to you should be arrested for any claim as a consequence of your compliance with this request, we undertake to provide bail or sufficient security to get the vessel or other arrested property released and to indemnify you for any loss or expenses caused to you by the arrest, whether same is justified or not.

We also guarantee and undertake to deliver up to you as soon as possible, duly discharged, the original of the above bill of lading, should this bill of lading come into our possession.

This guarantee is conditioned upon Continental Bank International and Addis Ababa Bank being advised of any legal proceedings or any other events which could invoke liability under this guarantee.

Either at your or at our or at Addis Ababa Bank's request, we or Addis Ababa Bank will accept, acknowledge, appear in, and defend on your behalf any and all actions brought against you, regardless of jurisdiction, which could ultimately lead to a claim under this guarantee.

This guarantee terminates two years after the date hereof or upon the completion of all legal proceedings, if any, including appeals, commenced within this two year period relating to the subject shipment, whichever is later; or, unless sooner discharge by submission of proof satisfactory to you of the right to such discharge.

We agree and guarantee to pay on demand all freights, demurrage, and other charges which may be due or may appear to be due and chargeable to the said goods.

In order to induce the Agents or Carriers and others to whom these undertakings are made to accept this guaranty, we hereby warrant and represent that all of the financial interests or other facts necessary to justify making of this guaranty by us exist to the full extent required for this purpose; and that the person acting for and on behalf of the undersigned has full authority to do so. This representation of fact is made with the full knowledge that the Agents or Carriers will rely thereon in refusing to release the cargo to the holder of the subject original blading.

Our total liability under this guarantee is limited to \$400,000 (Four hundred thousand U.S. Dollars).

For Continental Bank International.

A handwritten signature in dark ink, appearing to read "C. Allen", written over a horizontal line.

Vice President & General Manager

For Addis Ababa Bank

A handwritten signature in dark ink, appearing to read "Robert D. Scott", written over a horizontal line.

By Robert D. Scott
Agent in fact

Continental Bank International guaranty
of October 22, 1975 for bill of lading
No. 2 (Exhibit BB to Sevekow affidavit)



October 22, 1975

CONTINENTAL BANK INTERNATIONAL

ONE LIBERTY PLAZA · 91 LIBERTY STREET, NEW YORK, NEW YORK 10006

TO: SS SAM HOUSTON AND WATERMAN STEAMSHIP
CORPORATION, ITS SUBSIDIARIES, AF-
FILIATES, AGENTS, EMPLOYEES, AND THEIR
SUCCESSORS IN INTEREST (hereinafter
referred to collectively as "you")

Re: SS SAM HOUSTON
Bill of Lading No. 2
Dated August 20, 1975

Quantity and Contents: 1,251 Bags said to contain
about 75 metric tons of Usual
Good Quality Djimmah Coffee,
Grade 5, Hand-Picked.

Shipped by: Solomat Private Limited Co.

Post of Shipment: Djibouti

Port of Discharge: New Orleans

Shipping Remarks: Marks:

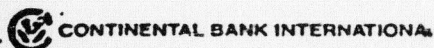
MULU
PRODUCE OF ETHIOPIA
CERT. 330-331-332
EACH 417

The original bill of lading covering the above shipment is not presently available. It is our desire that you not deliver to anyone holding the original of said blading and that you give instructions to your personnel or agents to proceed at once with the delivery of above cargo to Lonray, Inc. or their order, without waiting for the production of these documents of title.

In consideration of your complying with our request, we hereby guarantee and undertake to hold you and each of you harmless and keep you and each of you indemnified against all claims and demands of any kind and nature, arising from your compliance with this request, or under the above bill of lading or other bills of lading issued covering said cargo, as well as against all loss, damage and expense, including the cost of court and counsel fees, which may arise or be incurred by reason of said compliance, under said bladings, or claims and demands arising therefrom.

If possible, any bladings other than the above issued by the carrier, relating to this cargo, will be cancelled upon delivery of the said cargo.

Exhibit BB
Continental Bank International guaranty



If a claim should be raised against you as the consequence of your compliance with this request, or if any proceeding should be commenced in this respect, we undertake to provide you from time to time with sufficient funds to meet your outlays to such proceedings.

In case the vessel or any property belonging to you should be arrested for any claim as a consequence of your compliance with this request, we undertake to provide bail or sufficient security to get the vessel or other arrested property released and to indemnify you for any loss or expenses caused to you by the arrest, whether same is justified or not.

We also guarantee and undertake to deliver up to you as soon as possible, duly discharged, the original of the above bill of lading, should this bill of lading come into our possession.

This guarantee is conditioned upon Continental Bank International and Addis Ababa Bank being advised of any legal proceedings or any other events which could invoke liability under this guarantee.

Either at your or at our or at Addis Ababa Bank's request, we or Addis Ababa Bank will accept, acknowledge, appear in, and defend on your behalf any and all actions brought against you, regardless of jurisdiction, which could ultimately lead to a claim under this guarantee.

This guarantee terminates two years after the date hereof or upon the completion of all legal proceedings, if any, including appeals, commenced within this two year period relating to the subject shipment, whichever is later; or, unless sooner discharge by submission of proof satisfactory to you of the right to such discharge.

We agree and guarantee to pay on demand all freights, demurrage, and other charges which may be due or may appear to be due and chargeable to the said goods.

In order to induce the Agents or Carriers and others to whom these undertakings are made to accept this guaranty, we hereby warrant and represent that all of the financial interests or other facts necessary to justify making of this guaranty by us exist to the full extent required for this purpose; and that the person executing for and on behalf of the undersigned has full authority to do so. This representation of fact is made with the full knowledge that the Agents or Carriers will rely thereon in refusing to release the cargo to the holder of the subject original blading.

Our total liability under this guarantee is limited to \$400,000 (Four hundred thousand U.S. Dollars).

For Continental Bank International.

A handwritten signature in dark ink, appearing to read "M. M. M.", written over a horizontal line.

Vice President & General Manager

For Addis Ababa Bank

A handwritten signature in dark ink, appearing to read "Robert D. Scott", written in a cursive style.

By Robert D. Scott
Agent in fact

ORDER APPEALED FROM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OPINION FILED DEC.
8, 1976

HENRY F. WERKER, D.J.

STATEMENT OF FACTS

This is a suit to determine the right of the parties to the proceeds of 150 tons of Djimmah coffee, each shipment of 75 tons each of which was shipped from Ethiopia to the ports of New York and New Orleans.

The motion before the court is a motion by Waterman Steamship Corporation ("Waterman") for summary judgment against Continental Bank International ("CBI"). Judgment is sought for freight charges in the amount of \$6,619.92, demurrage in the amount of \$7,590.25 and disbursements in the amount of \$298.26 incurred in the defense of this action. Waterman seeks this amount under two agreements variously called guarantees or indemnities dated October 22, 1975 issued by CBI (the "CBI Agreements"). The motion is opposed by Addis Ababa Bank ("Addis Bank"), National Bank of Ethiopia, Solomat P.L.C. ("Solomat") (hereinafter collectively referred to as the "Ethiopian parties"), and CBI.

Waterman is a carrier of goods by sea which maintains an agent in Addis Ababa, Ethiopia by the name of

Opinion denying motion

Gellatly Hankey & Co. (Eth) S.C. ("Gellatly"). Among other services it provides, Waterman carries cargoes of coffee from Ethiopia to United States ports.

Solomat, an Ethiopian corporation, had borrowed funds from Addis Bank in July 1975 for the purchase of 600 metric tons of coffee for export, some 450 of which were bound for San Francisco and which are not at issue here. Pursuant to the financing arrangements Solomat had with Addis Bank, bills of lading were to be negotiated and delivered to Addis Bank to secure the repayment of loans by Solomat. Seventy-five metric tons were destined for New York, and another seventy-five tons were bound for New Orleans. A contract had been entered by Solomon Mahteme Selassie ("Solomon"), Solomat's general manager, with Van Ekris & Stoett, Inc. ("Van Ekris") for the purchase of 500 tons of coffee, 75 tons of which were destined for New York. Payment for the New York shipment was to be made by Van Ekris by means of a letter of credit in favor of Addis issued by Marine Midland Bank ("Marine Midland") at Van Ekris' request. Another contract had been entered under which Solomon agreed to sell and Lonray, Inc. ("Lonray") agreed to buy 75 metric tons of coffee destined for New Orleans. Payment for this shipment was to be made through a letter of credit issued by First National City Bank ("Citibank") at the instance of Lonray.

Gellatly received two written shipping instruc-

Opinion denying motion

tions from Solomat on or about August 20 or 21, 1975, one of which was to cover the New York shipment of coffee aboard the S.S. Sam Houston, a Waterman vessel, the other of which was to cover the New Orleans shipment. The shipping instructions for the New York shipment requested that a bill of lading naming Solomon as shipper, the consignee as "order" and the notify party as "Van Ekris & Stoett, Inc." be issued. The shipping instructions for the New Orleans shipment requested the issuance of a bill of lading naming Solomat as shipper, the consignee as "order" and the notify party as Lonray. In accordance with the shipping instructions, Gellatly issued two bills of lading. The bill of lading for the New York shipment was designated No. 1 and the bill of lading covering the New Orleans shipment was designated No. 2. Solomon, on or about August 26, 1975, took bills of lading Nos. 1 and 2, which the Ethiopian parties allege were the property of Solomat and fled Ethiopia.

On September 3, 1975, Gellatly received notice of the alleged theft of bills of lading Nos. 1 and 2 and was simultaneously requested to issue fresh bills of lading for both shipments. In a letter dated September 5, 1975, Aydis Bank wrote Gellatly indicating that it would hold Gellatly "harmless and indemnified against any liabilities, claims, risk and damages which you may sustain consequent upon your taking action on the basis of this letter." The letter elsewhere requested Gellatly's

Opinion denying motion

assistance in preventing Solomon from negotiating the two bills of lading. The letter further indicated that "If you later on deem it necessary, we can make arrangements to back our guarantee via our international correspondent banks in London and New York." Waterman by telex dated September 5, 1975 stated that it would issue duplicate original bills of lading against the shipper's guarantee endorsed by the bank. No mention was made in Waterman's responsive telex of a correspondent bank backing such a guarantee.

On September 16, 1975 Addis Bank gave Gellatly two letters of indemnity, the "Addis Agreements", to cover Waterman and its agents upon the issuance of duplicate originals. Gellatly delivered the requested duplicate original bills of lading to Solomat on September 17, 1975. The numbers affixed to the duplicate original New York and New Orleans bills of lading were Nos. 11 and 14 respectively. One date later Addis Bank advised Van Ekris to clear the goods against payment since a replacement bill of lading for the New York shipment had been obtained.

The Sam Houston arrived in New York on or before September 20, 1975¹ and discharged its New York shipment.

On September 22, 1975, the United Overseas Bank of Geneva advised that it was holding bill of lading No. 2. The following day, Waterman received notice from an international freight forwarder named Natural, Nydegger

Opinion denying motion

Transport Corporation that it was holding bill of lading No. 1. Thereupon Waterman telexed Gellatly and requested that it instruct Addis Bank and the shipper not to negotiate bills of lading Nos. 11 and 14. Waterman also stated that it would now require the posting of a bond with a United States bonding company or the opening up of a letter of credit with a major United States bank and that failing the posting of this additional security that it would require the return of bills of lading Nos. 11 and 14.

On September 25, 1975, Waterman received a telex from the plaintiff, Nikiforos Zervos ("Zervos") stating that he was in possession of bill of lading No. 1. Thereupon Waterman sent a telex directly to Addis Bank advising it of the Zervos telex and threatening the bank with suit in a United States court unless it returned bills of lading Nos. 11 and 14 and posted the United States security. Negotiations amongst Waterman, CBI and Addis Bank ensued over the issue of United States security.

In the meantime on September 24, 1975, Marine Midland had received from Addis Bank a delivery package including bill of lading No. 11, and on or about October 2, 1975, it added its endorsement to the bill of lading and delivered it to Van Ekris, indicating that it was releasing the bill of lading free of payment so that Van Ekris could obtain clearance of the shipment of coffee.

Opinion denying motion

On the same day, Van Ekris added its endorsement to bill of lading No. 11 and then delivered it fully endorsed to Waterman. Van Ekris presented at the same time a delivery order requesting delivery of the New York shipment to its customer, Hills Bros. Coffee, Inc. ("Hills Bros."). Waterman accepted the fully endorsed bill of lading No. 11 and a check from Hills Bros. covering freight but refused to deliver the New York shipment.

Later, Zervos appeared at the Waterman office to tender freight monies and demand delivery of the New York shipment. On day after this, on October 22, 1975, CBI issued the two agreements which were signed by a representative of Addis Bank as well. Upon the execution of the CBI Agreements, Waterman then returned to Zervos the check he had tendered for the freight on the two shipments. In the meantime, however, Van Ekris now refused to take delivery of the New York shipment? This litigation was begun on October 24, 1975. In an order signed December 17, 1975, the court directed that the coffee constituting the New York shipment be sold at auction to the highest bidder. Numerous cross-claims and counter-claims by the various parties have been filed?

I conclude that the CBI Agreements were issued without consideration and that therefore Waterman is not entitled to summary judgment based on its claim under the CBI Agreements.

Opinion denying motion

The consideration offered by Waterman for the CBI Agreements was identical to that offered by it for the Addis Agreements. Each of the Addis Agreements contained the following language:

On or about 29th August, 1975, your office issued bills of lading Nos. 1 and 2 respectively.

The original bills of lading have either been lost or destroyed and, therefore, we request that three new negotiable bills of lading of the same tenor be issued.

In consideration of the compliance by Waterman Steamship Corporation, and its agents with this request, we agree to protect, indemnify and save harmless yourselves, your agents, the carrier, and the vessel transporting the goods, its owner, charterer, master and agents against any and all claims and demands of any kind and nature arising out of the issuance of said new negotiable bills of lading, as well as against and [sic] all loss, damage and expense, including the cost of court and counsel fees which may arise or be incurred by reason of any such claims and demands and we further agree to deliver to Waterman Steamship Corporation or Waterman's agent the original bills of lading if same shall ever be found. [Emphasis added.]

The consideration given by Waterman under these agreements was the issuance of three new negotiable bills of lading for each of the New York and New Orleans shipments. The wording of the CBI Agreements covering each of the New York and New Orleans shipments was as follows:

The original bill of lading covering the above shipment is not presently available. It is our desire that you not deliver to anyone holding the original of said blading /sic/ and that you give instructions to your personnel or agents to proceed at once with the delivery of above

Opinion denying motion

cargo to Van Ekris and Stoett, Inc. N.Y.
or their order, without waiting for the
production of these documents of title.

In consideration of your complying with our request, we hereby guarantee and undertake to hold you and each of you harmless and keep you and each of your indemnified against all claims and demands of any kind and nature, arising from your compliance with this request, or under the above bill of lading or other bills of lading issued covering said cargo, as well as against all loss, damage and expense, including the cost of court and counsel fees, which may arise or be incurred by reason of said compliance, under said bladings [sic], or claims and demands arising therefrom. [Emphasis added.]

Based on the difference in the underscored language in the recitation of consideration in the two sets of agreements, Waterman argues that the consideration for the CBI Agreements was in fact different because of the additional promise not to deliver the coffee to the holder of the original bill of lading and to instruct personnel to proceed with delivery to Van Ekris. Waterman contends that it was never under any obligation under the Addis Agreements to deliver the shipment to the party presenting the duplicate original bills of lading and that even if it were, that this obligation was waived by Addis Bank's signing and becoming a party to the CBI Agreements.

A duplicate original bill of lading serves the same purpose as that of original bills of lading, i.e., to enable the party holding the document to present it and

Opinion denying motion

to obtain possession of the goods. Section 7-403 of the New York Uniform Commercial Code (McKinney 1964),⁴ provides in pertinent part that: "The bailee must deliver the goods to a person entitled under the document" The term "document" is defined as a document of title under §7-102, which in turn is defined in §1-201(15) to include bills of lading. Under §7-402,

"Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of . . . substitutes for lost, stolen or destroyed documents." [Emphasis added.]

And, under §7-601(2), a bailee may deliver goods to a person claiming under a missing document without court order, provided it does so in good faith and even though it takes the risk of remaining liable to any person injured thereby. Thus, once it went so far as to issue the duplicate original set, Waterman was obliged to deliver the goods to the party presenting them. The contention that Addis Bank could have waived the requirement of delivery by executing the CBI Agreements is unpersuasive. It is tantamount to arguing that the defense of lack of consideration may be waived merely by execution of a contract for which no consideration was granted.

Waterman also claims that its risk increased when Zervos presented the original bills of lading. This

Opinion denying motion

argument too is unavailing. The risk that someone would present the original bills of lading came into existence the minute Waterman issued the duplicate originals. It was to protect itself against this very risk that Waterman sought the Addis Agreements.

Having already bound itself by the agreements issued by Addis Bank to deliver the shipments of coffee to the holders of the duplicate original bills of lading, Waterman could not thereafter offer the identical consideration to CBI for the issuance of the CBI Agreements. In Arend v. Smith, 151 N.Y. 502, 45 N.E. 872 (1897), the New York Court of Appeals made the following remarks:

"The payment of a valid and addmitted debt by the one who owes it is no foundation for a promise, even by the creditor, let alone a stranger to the original consideration. The defendant parted with nothing that the law recognizes as of value, and suffered nothing that the law recognizes as an injury . . . and it is well settled that 'the performance of an act which the party is under a legal obligation to perform cannot constitute a consideration for a new contract.'" 151 N.Y. at 504-505, 45 N.E. at 872-873.

Accord, Regis Radio Corp. v. American Employers Insurance Co., 30 Misc. 2d 341, 214 N.Y.S.2d 976, 980 (Sup. Ct. 1961); Berivin Paper Corp. v. Village of Dansville, 50 N.Y.S.2d 636, 641 (Sup. Ct. 1944). As further noted by Williston,

"When a party under a contractual duty to do a certain act performs it under an agreement that it shall be the consideration for the promise of a

Opinion denying motion

third person, he incurs no legal detriment since he was previously bound to perform that very act." 1 S. Willison, Contracts, §131 (3d ed. 1957).

Accord, 9 N.Y. Jur., Contracts §101 (1960). Thus, no consideration supported the issuance of the CBI Agreements.

Because I find that there was insufficient consideration for the issuance of the CBI Agreements, it is unnecessary for me to address the numerous other arguments raised by the opponents to this motion.

Waterman's motion for summary judgment against CBI is hereby denied.

SO ORDERED.

DATED: New York, N. Y.
December 7, 1976

s/ HENRY F. WERKER

U.S.D.J.

Opinion denying motion

NOTES TO OPINION

1. The Ethiopian parties suggest this might have taken place at an earlier date.
2. By contrast, Lonray took delivery of the New Orleans shipment and also paid the freight charge on it.
3. These claims may be summarized as follows: In the main complaint Zervos stated a cause of action against Waterman for conversion on account of Waterman's failure to convey the New York shipment upon his presentation of the original set of bills of lading covering that shipment. In its answer, Waterman interpleaded CBI, the Ethiopian parties, Van Ekris and Lonray with respect to the entitlement of the parties to the proceeds of the coffee. The Ethiopian parties thereafter counterclaimed against Waterman for its improper issuance of the bill of lading and other allegedly improper conduct and added Solomon as counterclaim defendant. They also raised cross-claims against Marine Midland and Van Ekris because payments were not made to Addis Bank and because Van Ekris refused to ultimately accept delivery. In addition, the Ethiopian parties cross-claimed against Citibank and Lonray for failure of Citibank to pay pursuant to its letter of credit and for failure of Lonray to remit the price of the New Orleans shipment. Zervos subsequently cross-claimed against Lonray for conversion. Citibank then cross-claimed against Lonray for reimbursement under letters of credit issued at Lonray's request. Marine Midland similarly cross-claimed against Van Ekris to recover against it in the event that the Ethiopian parties are successful in their cross-claim against Lonray for conversion. Waterman thereupon counterclaimed for indemnity from Addis Bank and CBI in the event that it is ultimately held liable. Van Ekris subsequently added a cross-claim against Waterman for untimely delivery of the shipment to it and damage thereto. It also added a counterclaim against Zervos for damages in the event that Zervos turns out to have been Solomon's agent or had knowledge of the allegedly unlawful obtaining by Solomon of the bill of lading for the New York shipment.
4. Although no party addressing the motion pending before the court has discussed what law governs concerning the interpretation of the CBI indemnities, all parties have assumed that New York law controls. The court concurs that New York law does apply here. The CBI

Opinion denying motion

agreements were issued by a New York bank (albeit an "Edge Act" Bank, 12 U.S.C. § 611 et seq. (1970)), authorized only to engage in foreign transactions), for the benefit of a New York shipper who was to deliver goods to a New York purchaser. The only other country whose law could conceivably apply would be Ethiopian law on account of the contacts Ethiopia has with the case. In any event, however, the parties have not put before the court any foreign law for the court's guidance.

NOTICE OF APPEAL IN 75 Civ. 5293
(HFW)

Notice is hereby given that Waterman Steamship Corporation, defendant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final decision of this Court rendered in the opinion and order entered herein on December 8, 1976 denying defendant Waterman's motion for summary judgment against interpleaded defendant Continental Bank International.

Dated: New York, N. Y.,
January 6, 1977.

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendant,
WATERMAN STEAMSHIP CORPORATION

TO:

CLERK OF THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HAND BY ~~W. T. HALL~~
 ATTORNEYS FOR (CB)

Graduate of the University of Michigan
Leland G. Hertz

Attorneys for Ethiopian Petrels

Date: 3-18-17 Time: 11:00am